

Program Evaluation

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LEGISLATIVE RESEARCH COMMISSION

Frankfort, Kentucky

Committee for Program Review and Investigations

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FOREWORD

In 1997, the Program Review and Investigations Committee directed its staff to conduct a study of state agency contract administration procedures in the area of service contracts. The subsequent study focused on comparing contract administration practices in Kentucky state agencies to methods recommended by expert organizations from the state, federal, and non-profit sectors. Consistent contract administration techniques are vital, particularly with larger contracts or when human service delivery is involved. But the study found that state agency personnel often oversee agency contracts without uniform guidelines and with minimal training.

The Program Review and Investigations Committee adopted the staff report and recommendations on June 18, 1998.

This report is the result of dedicated time and effort by Program Review staff and secretaries Jo Ann Paulin, Mary Scott Lee and Susan Spoonamore. Our appreciation also is expressed to the Finance and Administration Cabinet for its cooperation and to the many agencies that responded to a staff survey and follow-up questions.

Bobby Sherman

Director

Frankfort, Kentucky

Date: July 9, 1999

MEMORANDUM

TO: The Honorable Paul E. Patton, Governor
The Legislative Research Commission, and
Affected Agency Director and Interested Individuals

FROM: Representative Jack Coleman, Co-Chair
Senator Joey Pendleton, Co-Chair
Program Review and Investigations Committee

SUBJECT: Adopted Committee Staff Report: State Agency Service Contract Administration

DATE: July 29, 1998

In 1997, the committee approved a study of contract administration in the area of service contracts. This study provides a comparison of the practices in Kentucky state agencies to practices recommended by four expert organizations from the state, federal, and non-profit sectors. Fifteen other states were surveyed about their practices also.

Like many states, Kentucky has a statutorily designated central procurement agency which delegates various authorities to individual agencies. The Kentucky Finance and Administration Cabinet has delegated almost all aspects of service contracting to the agencies. Contract administrators in the agency tend to be part-time, receive little training, other than on-the-job, and lack any clear guidance or monitoring by Finance. Although most agencies believe they do a good job in contract administration, few use performance standards, penalties or sanctions, performance monitoring or post-contract evaluations. Agencies express a need for training, contract administration policies and guidelines, contractor performance data, and general assistance.

It is recommended that Finance take a more active role in issuing policies and guidelines, defining qualifications and skills, developing training, monitoring compliance, and developing a vendor performance data bank.

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I

INTRODUCTION

Outsourcing governmental services has been on the rise in Kentucky for the last several years. Using a variety of contracting methods, state government uses the private sector, the public sector, and other governmental and quasi-governmental agencies to provide for service delivery and administrative operations. Kentucky currently contracts with private concerns, public agencies, and government units in four broad areas--commodities, facilities, road construction, and professional services.

State agencies entered into 1,981 personal service contracts for professional services worth \$414.9 million in FY 1997. Memorandums of agreement (MOA), which are contracts between state agencies and other governmental or quasi-governmental agencies, accounted for a large portion of spending on service contracts. For FY 1997, there were 1,361 MOAs, with a value of over \$447 million. The Transportation Cabinet estimates that it lets 400-500 new road construction contracts annually worth about \$500 million. At last count, there were 573 new and ongoing active road construction projects worth \$912 million. Most major facility construction and renovation contracts are centrally managed by the Finance and Administration Cabinet's (Finance) Department for Facilities Management. Expenditures for active construction projects totaled \$59 million in FY 1997.

For governments, contract administration is designed to ensure that taxpayers receive the quality and quantity of service purchased at the price agreed on. Contract administration involves activities preceding the contract award to those after completion. Contracts for construction and roads entail greater spending than contracts for services. However, a service is more qualitative and less quantitative than a product. Instead of miles of road paved, services tend to be more subjectively defined, e.g., an acceptable legal brief. Management and oversight of services is less formalized, which also increases the risk associated with service contracts. Roads and construction contracts are each monitored by a single agency staffed by professionals. Service contracts, on the other hand, are overseen by the individual

PROBLEM CONTRACTS

- **KIRIS - \$67.7 million**
Contract monitoring--related issues cited in audit
- **Health Purchasing Alliance - \$4.5 million**
Audit cites lack of adequate staff members to oversee company
- **Underground Storage Tanks - \$37 million**
On-site monitoring strengthened after scrutiny
- **Girls' Home - \$900,000**
Poor management noted in shutdown
- **School Computers - \$5 million - plus**
Auditor criticizes Education Department for poor contract monitoring

agencies, operating without uniform guidelines for contract management. The potential for inconsistency in contract administration is greatest for service contracts.

In the past few years, agencies experienced management and oversight problems with some significant service contracts. These include the KIRIS school testing contract, a juvenile girls' home in Lexington, the underground fuel-storage tank removal program, the Health Purchasing Alliance's relationship with a third-party administrator, and a contract to undertake statewide school computerization (Chart "Problem Contracts"). These contracts or agreements alone totaled over \$110 million.

The state has a vast array of service contracts in effect, ranging in value from a few thousand dollars to millions of dollars. While some of these contracts may need only minimal monitoring, others--particularly those involving direct services to clients--may require more intensified monitoring. Monitoring is essential to protect the public interest, to ensure the quantity and quality of service, and to guard against waste, fraud, abuse, and mismanagement.

METHODOLOGY

The general methods used for this study included: statute and regulation reviews, surveys of Kentucky agencies and other state purchasing agencies, literature reviews, and interviews with Kentucky officials, other state purchasing officials, national organizations, and federal agency officials.

Personnel in 91 agencies from all three branches of government responded to a detailed survey about their contract management practices (Appendix A). The survey sought information concerning number and types of service contracts, trends in contracting, contract administration practices, personnel assigned, training, services provided by the state's central procurement agency, the Finance and Administration Cabinet, and needs or suggestions. Staff conducted follow-up interviews with a number of agencies to clarify data and to obtain additional information. Staff interviewed central purchasing officials or representatives in 15 other states about their state's general procurement practices. States contacted were the contiguous states, those listed in the Council of State Government's Southern Legislative Conference, plus Wisconsin. Wisconsin was recommended by a state procurement official as having a formalized contract administration process. (Maryland, Alabama, and Louisiana did not respond.)

OVERVIEW

Section II of this report examines the extent of contracting in Kentucky state government, including contract areas and volume, types of contracts, and the extent of use of service contracts. Section III presents a general overview of contract management in the state, legal and regulatory requirements, and responsibilities for contract management by Finance and agencies. Section IV discusses a three-phase model for contracting developed by staff and examines Finance's role in those phases. Sections V, VI and VII deal with the three phases of contracting--pre-contract, implementation, and post-contract--and compare state agency contract administration practices with ideal practices.

II

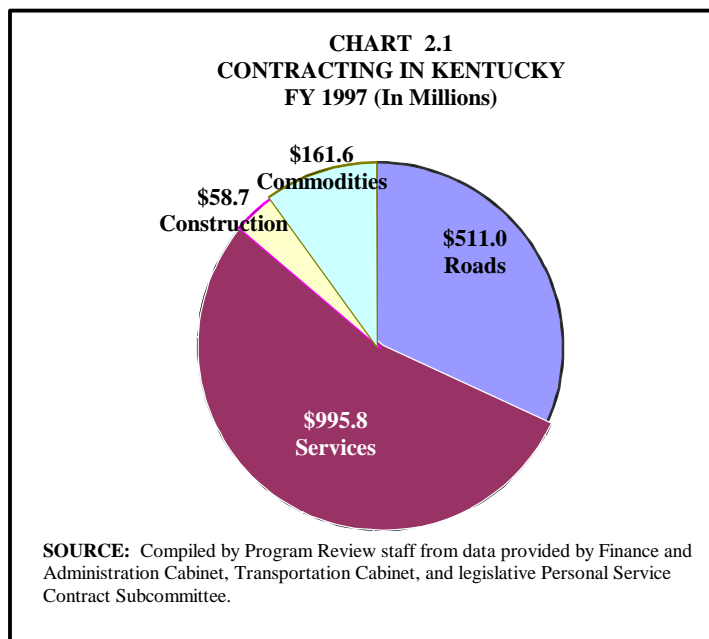
CONTRACTING IN STATE GOVERNMENT

Contracting is a growing trend in all states. The push toward smaller government and privatization has led state agencies to use contracts to purchase both commodities and services. Contracts are used to assist agencies with administering programs, delivering services, and replacing state agency functions (privatization). In fiscal year 1997, the state of Kentucky contracted for an estimated \$1.7 billion in goods and services.

In the past few years, some significant service contracts have experienced problems with management and oversight. These include the KIRIS school testing contract, a juvenile girls' home in Lexington, the underground fuel-storage tank removal program, the Health Purchasing Alliance's relationship with a third-party administrator, and a contract to undertake statewide school computerization (Chart "Problem Contracts"). These contracts or agreements alone totaled over \$110 million.

Agencies purchase commodities through price contracts and purchase orders. Agencies obtain services by price contracts, personal service contracts, memorandums of agreement, and provider agreements. Service contracts can involve

administrative functions or client services. As shown in Chart 2.1, services accounted for the largest contract expenditures, at almost \$996 million.

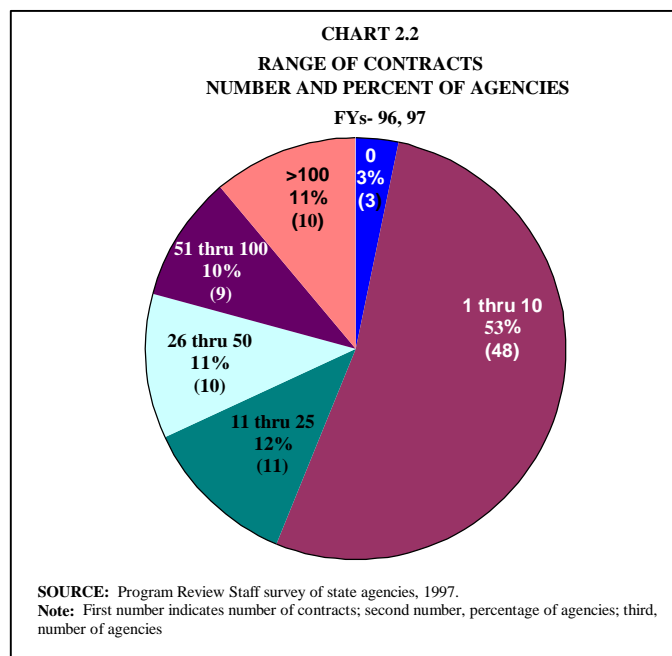


There are no uniform Finance and Administration (Finance) guidelines as to how contracts should be managed. Therefore, the potential for inconsistency in contract management is greatest for service contracts. Commodities, construction, and roads can be physically inspected and tested. The nature of the product received and the contract

administration process involved indicates that there is more potential for contract problems or failure with service contracts. If goods are defective or fail to meet bid specifications, the state can reject them. On the other hand, services are not as objectively verifiable. In the case of services, it is difficult to determine measurable standards, verify service delivery, or assure quality. Furthermore, capital construction and road construction contracts are centralized in, and monitored by, single agencies, the Finance Cabinet and the Transportation Cabinet, respectively. Individual agencies oversee service contracts.

Most Agencies Have Fewer Than Ten Contracts

Kentucky currently contracts with private companies, public agencies, and government units for a wide variety of goods and services. Generally, there are four major areas--commodities (goods), services, capital construction, and roads. Of 91 agencies from all three branches of state government responding to the Program Review staff survey, only three reported no contracts this past biennium. As shown in Chart 2.2, over 50 percent of the agencies have ten or fewer contracts, while 11 percent have over 100.



\$996 Million Spent for Service Contracts

Kentucky issues contracts for commodities, services, construction projects, and roads (Chart 2.1). Commodities, which account for \$162 million in contract expenditures, are tangible goods, materials, and equipment. Services are the rendering of time and effort rather than tangible goods. Services are related to agency administration, e.g., janitorial services, keypunch, data entry, and computer programming, and client services, e.g., foster care, and claims processing. The state spent an estimated \$996 million for services in FY 1997. Capital projects are major construction activities other than roads, such as buildings, land, or major renovations. Most major building construction and renovation contracts are centrally managed by Finance's Department for Facilities Management. In FY 1997, \$59 million was spent on facilities construction projects. The Transportation Cabinet monitors and oversees road construction contracts. Transportation spent \$511 million on roads for FY 1997. Additionally, the Transportation Cabinet spent \$33 million for consultant/design contracts.

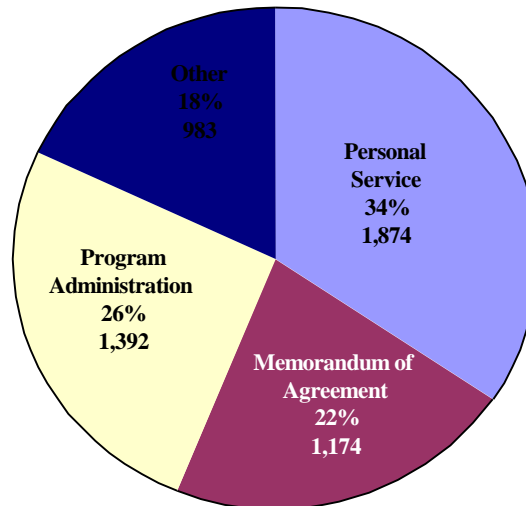
Half of the 5,400 Service Contracts Are Between State Agencies

For the current biennium, state agencies report a total of 5,423 service-related contracts (Chart 2.3). The largest number of contracts is memorandums of agreement (MOA), totaling 2,566. This figure includes such other agency designations as program administration contracts (PAC) and memorandums of understanding (MOU). This number does not include MOAs (or other agency designations) that are strictly information-sharing agreements or contracts which do not involve a monetary provision, such as agreements between the Kentucky Higher Education Assistance Authority (KHEAA) and local banks specifying terms of participation in KHEAA-administered loan programs. Also removed from these figures are contracts with medical providers for the Medicaid program, foster care providers and child care homes, a total of 52,576 provider agreements.

Most Service Contracts Are for Direct Client Services

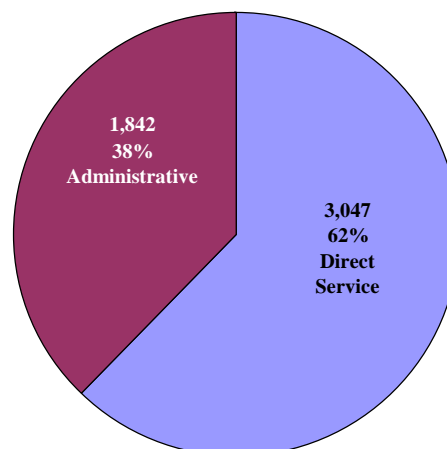
According to the agency survey (Chart 2.4), the bulk of service contracts are for activities related to direct client services. Agencies consider only about a third of the contracts to be related to their administrative needs. These range from contracts for

CHART 2.3
NUMBER OF SERVICE CONTRACTS
BY TYPE
FYs 1997, 1998



SOURCE: Program Review staff survey of agencies, 1997.

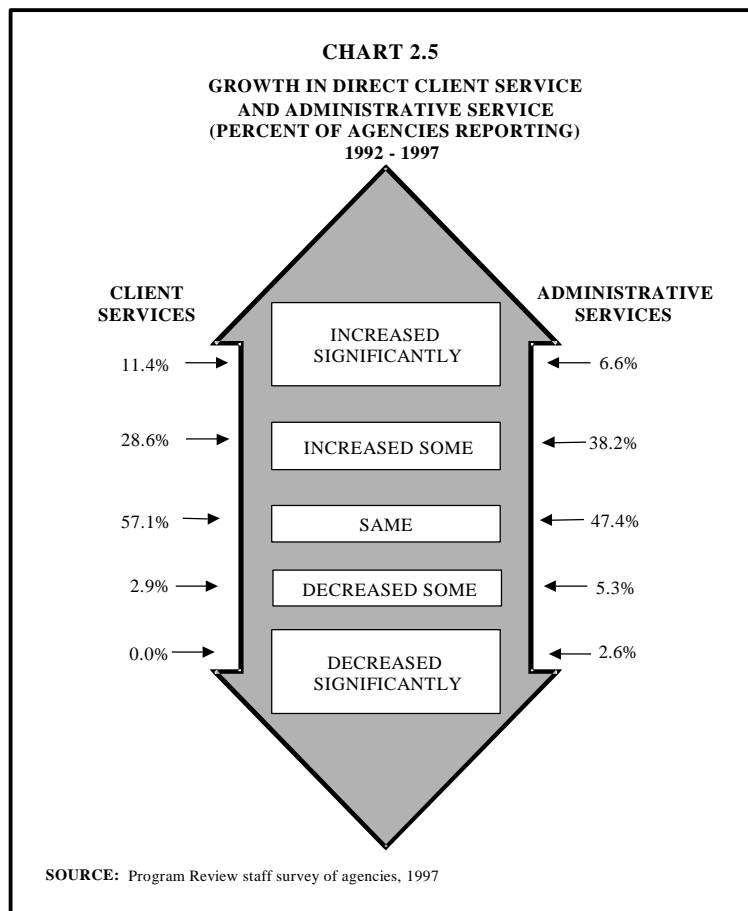
CHART 2.4
NUMBER OF DIRECT SERVICE/AND
ADMINISTRATIVE CONTRACTS
FYs 1997, 1998



SOURCE: Program Review staff survey of agencies, 1997.

various professional services, such as attorneys, administrative law judges, certified public accountants, expert witnesses and others obtained by personal service contracts and MOAs. Also included are bid price contracts for hourly rate services, and price contracts solicited by requests for proposal or invitations for bid. These include such services as janitorial, computer programming, software training, and data entry.

Generally, since 1992, the trend in client service contracts has been stable for the



majority of agencies (57 percent), while 40 percent of the agencies have experienced an increase in client service contracts (Chart 2.5). In the area of administrative services, some agencies report a slight decline (8 percent), but a larger number, 45 percent, report an increase. The increase in contracts seems to be most pronounced among those agencies which already have large numbers of contracts.

Contract Process and Oversight Varies by Type of Contract

Kentucky uses several different types of contracts to secure goods or services. These include

one-time purchase orders, price (term) contracts, personal service contracts (PSCs), and memorandums of agreement (including memorandums of understanding, program administration contracts and provider agreements). Chart 2.6 summarizes each type of contract by method of award, nature of end product, responsibility for oversight, and legislative oversight. As shown, oversight for purchase orders and facility construction is centralized in Finance, while road construction contracts are centralized in Transportation. However, each individual agency oversees its own PSCs, MOAs, and price contracts. The method of award usually falls into two categories--competitive and noncompetitive

CHART 2.6

STATE CONTRACT TYPES AWARD METHOD, PRODUCT AND OVERSIGHT

Contract Type	Method of Solicitation and Award	Nature of the End Product	Responsibility for Oversight	Legislative Oversight*
Purchase Order/Price Contract	Competitive Bid	Tangible, objectively verifiable	Agency and Finance Cabinet	No statutory oversight designated
Construction	Design awarded through competitive negotiation, construction through bid	Tangible, objectively verifiable	Centralized in Finance Cabinet	Capital Planning/ Capital Projects and Bond Oversight
Road	Design awarded through competitive negotiation, construction through bid	Tangible, objectively verifiable	Centralized in Transportation Cabinet	Transportation
Personal Service*	No competitive bid required	Quality service evaluated on objective criteria	Agency	Personal Service Contract Review Subcommittee**
Memorandums of Agreement	No competitive bid required	Service contracts evaluated on objective and subjective criteria	Agency	No statutory oversight designated*

NOTE: *Committees may choose to selectively review any contract.

** Pursuant to HB 460, this will become Government Contract Review Committee on July 15, 1998.

SOURCE: Program Review staff.

Purchase Orders. Contract purchase orders are executed to buy a one-time quantity of goods or services at a specific price. Generally, Finance issues these contracts using a competitive bidding or an invitation for bid (IFB) process. In some cases, agencies have been given individual delegation to secure items specific to the agency's operation (Appendix B). In addition, state agencies can use a simplified small purchase procedure to buy needed goods which do not exceed a threshold dollar amount. Agencies which have not been delegated higher purchasing authority may purchase goods and services not exceeding \$1,000.

Price Contracts. Price contracts are competitively awarded to cover estimated requirements for goods or services. Generally, price contracts are issued when several agencies have a continuing need for a specific service or commodity. Price contracts designate the unit cost and specifications for commodities or services, and agencies may

purchase from these at any time. Occasionally, price contracts may be issued for a single agency. These contracts are usually issued by Finance's Division of Purchases. Invitations for bid are used to solicit quotes for hourly services; requests for proposal (RFP) are used when a service is needed, but the specific approach and price is open to proposal. Price contract terms may vary but are generally awarded for one year with the option for annual renewal.

Requests for proposal generate contracts that are awarded through competitive negotiation. RFPs are the documents used to solicit competitive bid proposals. RFPs are used to solicit bids for specialized services when price is not the only consideration. Experience and past performances also are taken into consideration. Because of the complexity of this method of contracting, Finance issues the RFP, receives proposals, and oversees the selection process. RFPs are technically between the Finance Cabinet and the contractor. Currently, the Finance Cabinet reports 36 active RFP contracts. Price contract expenditures for services amounted to \$134 million in FY 1997.

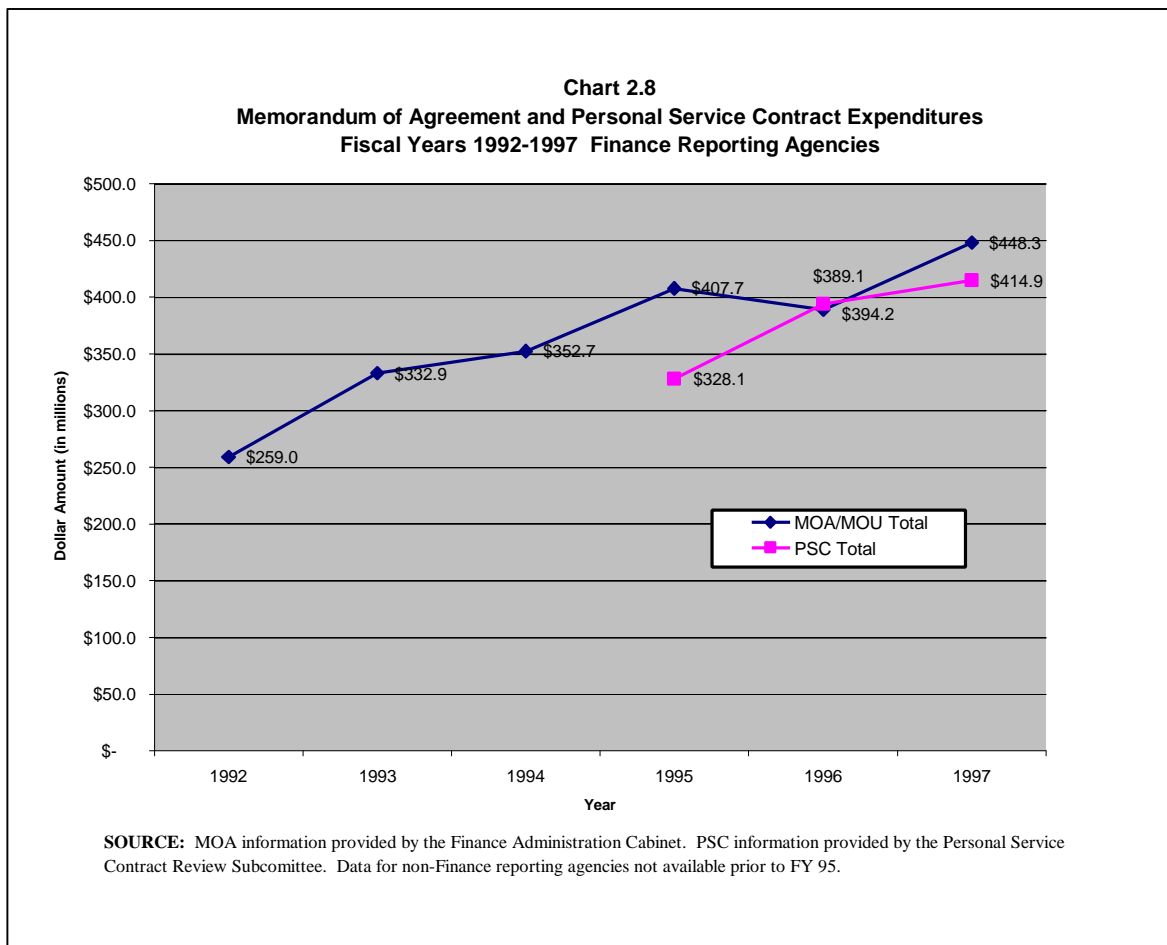
Personal Service Contracts. Personal service contracts are used to purchase services exempted from competitive bidding. According to KRS 45A.095, these are sole source purchases (services where competition is not feasible) and emergency purchases. Personal service contracts are used if state personnel are not available or if it is not feasible for state personnel to perform the service. Finance Cabinet regulations require that agencies issue an RFP for services; those exceeding \$25,000 are to be given adequate public notice. State agencies required to report to Finance entered into 946 personal service contracts in FY 1997, totaling over \$112 million. PSCs for all state and quasi-state agencies, including the universities, totaled \$414.9 million for FY 1997. (Appendix C)

CHART 2.7
TYPE OF SERVICE
NUMBER OF PSCs AND AMOUNTS ENCUMBERED
(IN MILLIONS)
FYs 1992-1997

TYPE OF CONTRACT	FY 1992 # AMOUNT	FY 1993 # AMOUNT	FY 1994 # AMOUNT	FY 1995 # AMOUNT	FY 1996 # AMOUNT	FY 1997 # AMOUNT
Attorneys	107 \$3.140	104 \$2.936	101 \$2.587	126 \$4.096	151 \$5.524	195 \$7.272
Auditors	21 \$0.733	24 \$11.051	26 \$1.648	34 \$1.987	37 \$8.971	64 \$7.666
Medical	175 \$8.321	160 \$11.537	188 \$7.663	184 \$8.154	210 \$13.221	211 \$11.552
Computer	12 \$2.779	17 \$3.500	18 \$4.241	17 \$4.484	14 \$7.176	25 \$7.817
Consultants	81 \$5.802	57 \$9.447	70 \$10.564	82 \$11.015	76 \$4.691	259 \$45.741
Advertising	6 \$3.340	8 \$2.222	9 \$2.245	12 \$2.630	6 \$2.790	35 \$2.993
Artistic	18 \$0.225	13 \$0.164	13 \$0.335	12 \$0.088	19 \$0.179	15 \$1.164
Appraisals	36 \$1.754	30 \$1.346	17 \$1.161	30 \$2.614	23 \$0.681	95 \$14.708
Actuarial	N/A	N/A	N/A	N/A	N/A	13 \$1.879
Investigative	N/A	N/A	N/A	N/A	N/A	23 \$211
Training	N/A	N/A	N/A	N/A	N/A	121 \$3.120
Misc.	227 \$21.723	282 \$27.021	303 \$35.494	304 \$28.398	381 \$47.462	394 \$37.513
TOTALS	683 \$47.817	695 \$66.289	745 \$65.938	801 \$63.467	917 \$90.696	1450 \$141.636

*This table does not include any architectural, engineering, or any other construction/highway construction related contracts. ** N/A – Not Available

SOURCE: Legislative Personal Service Contract Review Subcommittee's cumulative year-end report.

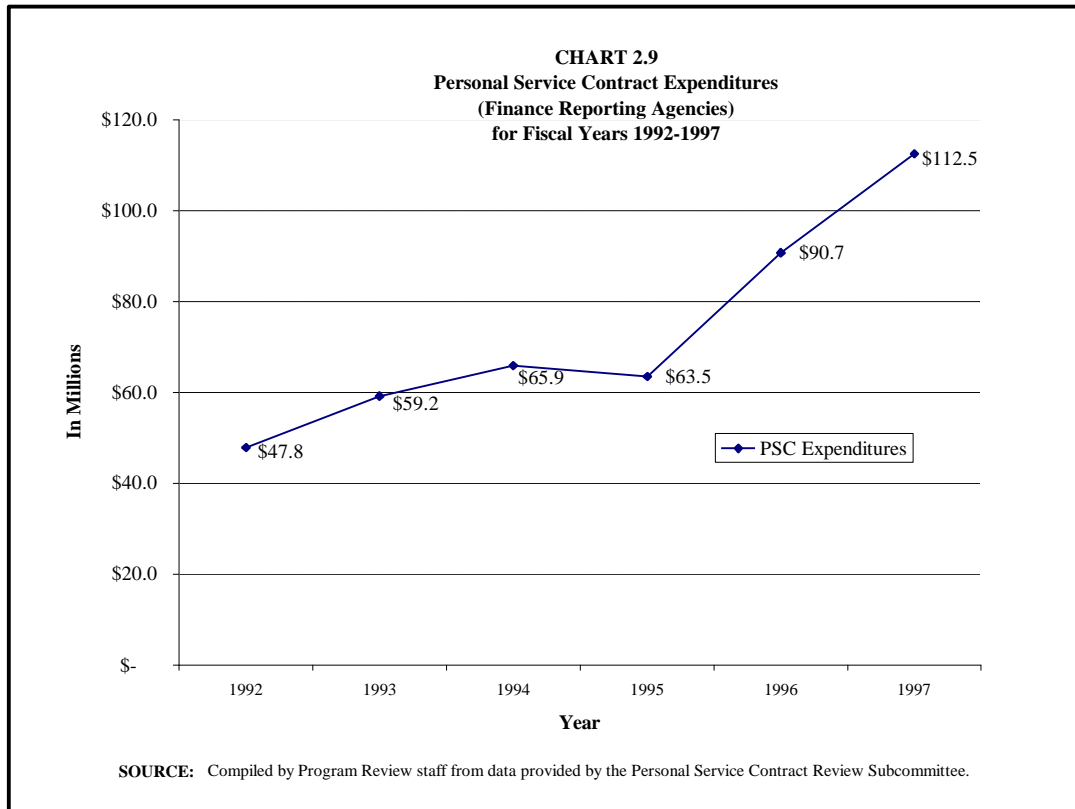


The last column of Chart 2.7 shows the categories of personal services contracted for in FY 1997. The largest category of PSCs is for consultant services. Chart 2.7 shows that the number of PSCs for consultant services doubled from FY 1992 to FY 1997. Medical services also account for a large number of PSCs, with 211 personal service contracts in FY 1997. Historical usage of PSCs from FY 1992 to FY 1997 is shown in Chart 2.8 for all agencies reporting to the legislative Personal Service Contract Review Subcommittee (which will become the Government Contract Review Committee on July 15, 1998). PSC amounts have increased 26 percent over the period of FY 1995 to FY 1997. Chart 2.9 shows only those agencies reporting to Finance.

Memorandums of Agreement. Memorandums of agreement are contracts for services between state agencies and governmental or quasi-governmental entities, such as state colleges or universities, community action agencies, area development districts, regional mental health/mental retardation boards, and other state agencies or political subdivisions. By Finance regulations, these include various agency designations such as program administration contracts and memorandums of understanding.

An MOU is a contract or agreement used if there is a joint project or undertaking by any state agency and another entity or entities, either government or private, including capital construction. MOUs also include cooperative agreements, such as the exchange

of confidential information. The human resources cabinets (Families and Children, and Health Services), along with a number of other cabinets and universities, use program administration contracts (PAC) as another form of MOA. PACs are more detailed or include requirements more extensive than can be met under standard MOAs. The



expenditures for MOAs compared to PSCs are shown in Chart 2.9 for the FYs 1992 to 1997. (Appendix D contains the MOA contract dollar amounts by agency for FY 1992-1997.)

Provider Agreements. The provider agreement is another special form of contract. Both human resources cabinets have thousands of provider agreements in effect. The agreements are based on the "any willing provider concept," which holds that if a provider is qualified to deliver a service, a doctor, for example, and meets the qualifications, the cabinet will qualify him as a provider. The Cabinet for Families and Children has 3,294 provider agreements in effect for such services as private childcare, subsidized adoption, childcare, and foster care. The Cabinet for Health Services has 49,282 in effect, the largest proportion being Medicaid provider agreements.

III

STATUTORY STRUCTURE FOR CONTRACTING IN KENTUCKY

Kentucky state government's current procurement policy is contained in KRS 45A, the Kentucky Model Procurement Code (KMPC). One of the purposes of the KMPC, based upon the American Bar Association's model procurement code, is to "provide safeguards for the maintenance of a procurement system of quality and integrity." The state procurement code:

- Establishes the powers and duties of the Finance and Administration Cabinet (Finance);
- Establishes the methods of seeking, awarding, and administering state contracts;
- Outlines uniform standards for contracts and terms that must be included;
- Sets out contract claim and dispute resolution processes;
- Establishes cooperative purchasing for local governments and agencies;
- Defines policies for state procurement; and,
- Establishes policies and procedures for personal service contracts.

Kentucky's Procurement Approach is Similar to That of Many States

The Program Review survey of 15 states found that Kentucky is similar to other states in its procurement approaches. Generally, in other states, the chief procurement official has the responsibility, authority over, and accountability for all contracts. In many instances, the chief procurement official may delegate broad responsibility to agencies to oversee and administer their own contracts.

The survey of other states identified three categories of service contracting processes:

- The central procurement agency has authority for all contracting for services;
- The central procurement agency delegates authority to agencies for service contracting; and
- Agencies have authority to handle all service contracting.

The majority of the 15 states surveyed, as well as Kentucky, fall into the second category, where the central procurement agency delegates authority for service contracting to the individual agencies.

Ninety-three percent (14) of the states surveyed have a central procurement agency, as does Kentucky. However, 87 percent (13) actually have centralized procurement. In cases where the state has centralized procurement, the central procurement agency is responsible for all procurement. Fifty-three percent (8) of the states surveyed delegate at least some of their procurement authority to the individual agencies, much like Kentucky. In most cases, the authority to contract for services is delegated to the agencies by the central procurement agency.

In those states with a central procurement agency, the agency is given procurement authority, regulatory authority, and authority by statute. Contract administration in all of the 15 states surveyed is handled solely by the agencies, which is the case in Kentucky. Formal legislative oversight occurs in only 27 percent (four) of the states surveyed.

Finance is Kentucky's Central Procurement Agency

Kentucky's procurement code stipulates that Finance is to serve as the central procurement and contracting agency for the state. However, some agencies have been delegated procurement authority in select areas by both the General Assembly and Finance. For the most part, under the procurement code, Finance's authority includes both mandatory and permissive powers and duties to facilitate contracting in the Commonwealth. Included in the general mandatory powers are to:

- Act as the central procurement and contracting agency;
- Recommend regulations, rules, and procedures;
- Purchase or otherwise acquire all supplies, services, and construction for the state; and
- Publish a manual of procedures.

In addition, the procurement code gives Finance a number of discretionary powers.

- Adopt administrative regulations governing purchasing;
- Establish a procurement advisory council; and
- Issue regulations that enable the Commonwealth to effect changes and modifications to state procurement.

The General Assembly has allowed Finance to delegate its authority over contractual services under KRS 45A.045 (3). Chart 3.1 shows a listing of current delegations. However, these delegations do not shift the ultimate procurement responsibility or power from Finance. Delegations are accomplished with a Secretary's order. The Secretary's order must detail the authority the agency will receive, the purpose of the delegation, and the duration of the delegation.

All standing delegations remain in force until they are modified or rescinded by the Secretary. The Finance Secretary may delegate to an agency purchasing power that exceeds the small purchase limits in KRS 45A.100. Statutorily, universities have the option of purchasing their own products or services. The Transportation Cabinet has a standing delegation of authority for administering its own contracts, with no oversight by Finance.

**CHART 3.1
DELEGATIONS OF PURCHASING AUTHORITY
IN FORCE AS OF FEBRUARY 1, 1998**

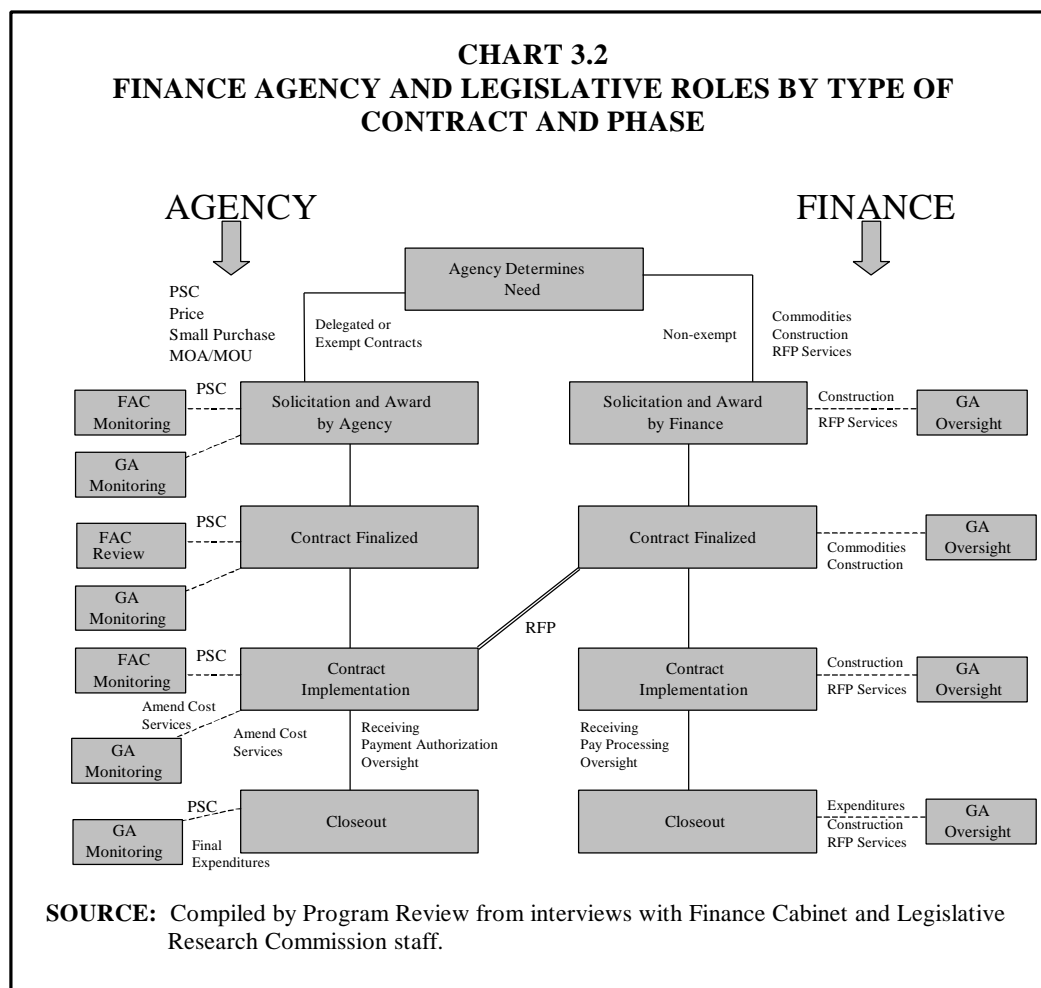
ORDER NUMBER	CABINET/AGENCY	SCOPE OF DELEGATION
S85-680	Kentucky Fair and Exposition Center	Purchase and payment of ushering and parking attendant services, as well as security services
S92-825	Correctional Industries	Small purchase limit of \$5,000 for 29 items
S93-258	Workforce Development	High tech vehicle modifications for eligible vocational rehabilitation clients
S93-478	Department of Military Affairs	Small purchase limit of \$5,000 on items, supplies and equipment for local emergency planning committees
S93-830	Workforce Development	Rehabilitation technology devices and services for eligible vocational rehabilitation clients
S93-859	Transportation	Engineering services
S96-040	Transportation	92 specific items
S96-083	Workforce Development	JTPA-related contracts TRADE adjustment assistance training agreements
S96-399	Workforce Development	Higher small purchase authority for the purchase of a specific service. The cost may frequently exceed the agency's small purchase limit.
S96-400	Finance Cabinet, Department for Administration	Purchase and payment of stand-alone facsimile equipment from all state agency price contracts, and processing a fax justification submission and approval form
S96-679	Health Services	Medicaid provider agreements Provider agreement for disability determination Emergency medical service agreements
S96-680	Families and Children	Day care service agreements Foster home agreements Adoption subsidy agreements Private child care agreements Psychiatric hospital agreements Child care provider service agreements
S97-495	Workforce Development, Department of Vocational Rehabilitation	Assistive technology for eligible state employees with disabilities
S98-364	Justice Cabinet, Department of Juvenile Justice	Private child care services for juveniles under the department's responsibility

Source: Compiled by Program Review staff from orders of the Secretary of the Finance and Administration Cabinet.

Finance Delegates Administration, Agency Processes Vary

Finance takes an active role in the initial purchasing of goods and services and in paying the resulting bills, but the day-to-day responsibility for administering contract terms belongs with state agencies. Agencies must comply with KRS 45A and all other purchasing statutes, administrative regulations, and Finance policies and procedures. Chart 3.2 shows agency and Finance areas of responsibility for various types of contracts. Finance has delegated its contract management authority to the agencies. The Cabinet believes that the using agency is the best source for agency contract administration, but offers little guidance in contract administration. Finance has not issued any detailed policies or procedures on contract administration.

The Secretary of Finance decides matters of state procurement policy. Finance policy requires contracts to be "administered in accordance with the terms and conditions of the contract and sound principles of effective purchasing." The divisions of Purchases and Contracting and Administration can perform or request periodic procurement audits to assure purchasing compliance.



Each agency head is responsible for establishing procedures to receive and inspect all property and services purchased. Finance relies on the agencies to ensure that proper quantity, quality, and other contract terms regarding deliverables are fulfilled. This applies to both delegated and non-delegated contract items and services. The Finance Cabinet has the final authority to settle, compromise, pay, or adjust any claim or controversy with contractors. If a minor problem develops with Finance contracts, the agency is expected to try to resolve it with the vendor. If the problem is major, or cannot be resolved, the agency must file a vendor complaint report with Finance's Division of Purchases for its intervention.

Kentucky administrative regulation KAR 200 5:025, promulgated by Finance, states that Finance "needs to supervise state agencies acting under its delegated authority from MOAs and MOUs." State agencies will be required to "report annually on all MOAs and MOUs used by that agency and to follow guidelines for use of MOAs and MOUs." Thus, Finance's regulations recognize the need to supervise agencies, that the agencies must comply with some type of guidelines, and that it is Finance's duty to monitor agency activities.

Finance officials indicate that "most contracts are devoid of any contract management by Finance." Finance relies on the individual agencies to ensure that contracts are performed correctly, identify problems, request assistance, verify the product, and deal with other contract compliance conditions. Finance does not actively monitor agency compliance but instead relies upon billing statements from the agency regarding compliance. The Cabinet offers no contract management training to agencies, nor does it provide recommended policies and procedures, even though it requires agencies to follow generally accepted practices. Not until recently did Finance track the MOA contracts agencies had, even though these amounted to several hundred million dollars. In 1996, the Program Review and Investigations Committee recommended that Finance begin tracking these contracts. Finance subsequently issued regulations requiring reporting.

RECOMMENDATION 1: FINANCE SHOULD MONITOR THE CONTRACT ADMINISTRATION ACTIVITIES OF AGENCIES

The Finance and Administration Cabinet has statutory responsibility to issue regulations and guidelines and ensure compliance. The Cabinet should review agency plans for contract administration and physically audit their actions on a periodic basis, concentrating especially on complex contracts, high cost contracts, contracts to be renewed, and those having significant impact on health or safety.

Legislative Review of Service Contracts Requires Proof of Necessity and Monitoring Plan

The 1998 General Assembly extended its legislative PSC responsibilities to include MOAs. House Bill 460 revised the procedure of the legislative Personal Service

Contract Review Subcommittee to include routine review of memorandums of agreement over \$50,000. The Legislature currently oversees only PSCs. The subcommittee will become the Government Contract Review Committee on July 15, 1998. With this change, it will have statutory authority to review both PSCs and MOAs, to examine the need for the service, whether the service could or should be performed by state personnel, and the cost and duration of the contract. Under House Bill 460, PSC contracts for \$10,000 or less (raised from \$1,000) will be statutorily exempt from the routine review process but must be filed with the subcommittee for informational purposes. MOAs and price contracts for services of \$50,000 or more will be subject to review; those for less also must be reported.

Agencies wishing to contract for personal services must fill out a “proof and necessity form” (PON) for their PSC. The PON asks the agency to indicate why the contract for services is needed. Agencies also are asked to describe the contract monitoring activities and to identify who will be responsible for the supervision and monitoring of the contractor’s performance.

While the subcommittee does not have the authority to cancel a contract, work may not begin on a contract until it is filed with the subcommittee. Payments may not be made until the completion of the review process. If the subcommittee does not approve the contract, it is returned to the Finance Secretary, who may determine whether the contract shall proceed, be amended, or be canceled. Amendments or modifications to PSCs are to be reported to the subcommittee for its information and possible review.

The following agencies have been delegated authority and may submit their contracts directly to the subcommittee: state universities; the Kentucky Housing Corporation; the Kentucky Lottery Corporation; the Legislative Research Commission; the Transportation Cabinet; the Kentucky Higher Education Assistance Authority; the Department for Facilities Management, the Finance and Administration Cabinet; and the Administrative Office of the Courts.

IV

CONTRACT ADMINISTRATION

State governments, Kentucky's included, are opening up traditional public service delivery to the competitive marketplace. Outsourcing government services is increasing in Kentucky. Using a variety of methods, state government has shifted service delivery to the other government agencies and the public and private sector in ever-increasing numbers; it has also seen more interagency contracting.

Contract administration is a process that begins when the agency develops a clear concept of its needs and a statement of work. It ends when the contract is audited after the work is complete. The National Association of State Purchasing Officials (NASPO) defines contract administration as:

The administration of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled. In governments, this administration may include responsibility delegated by the central procurement authority to using agencies.

Monitoring and assessing the performance of outside contractors is vital to maintaining the quality of services. A government's ultimate responsibility for service delivery does not end because the service has been contracted. To ensure receipt of the service purchased, government purchasing agents must determine exactly what they want accomplished from the delivery of a service, the running of a program, the operation of an enterprise, the standards to be met, and the specific measures, and expected levels of performance. They also must monitor contractors to assure that performance is in accordance with the performance standards. The level of detail, formality, or complexity of these will differ with the type of service, cost, and outcome effects.

To develop the following discussion on contract administration practices, Program Review staff examined related state and federal studies, audits and reports dealing with the subject. Staff used these documents to develop a listing of recommended contract administration practices. Staff also interviewed officials in 15 states regarding their procurement authority, contract administration processes, and tools used to monitor contracts.

**Contract Administration Begins Before
the Contract is Let and Ends After the
Contract is Finished**

Program Review staff looked at a number of state and federal reports on contract administration and recommendations by professional associations to determine common practices (Appendix E). From this, Program Review staff developed a conceptual framework of contract administration--a model extending from contract planning to contract implementation and post-contract activities (Chart 4.1).

CHART 4.1
RECOMMENDED CONTRACT ADMINISTRATION FEATURES

P O L I C I E S & P R O C E D U R E S	<p><u>Pre-contract</u></p> <p><i>Planning</i> Develop in-depth agency needs analysis Draft performance based work statement with measurable deliverables</p> <p><i>Bid solicitation</i> Include work statement Indicate how state will maintain oversight Address access to records Describe standards for performance measurement</p> <p><i>Contractor Selection</i> Assure that process is fair, open and impartial Make sure adequate competition exists</p> <p><i>Contract Provisions</i> Include clear statement of services expected Indicate roles and responsibilities of contractor and agency Define performance standards</p> <p><i>Contract Administration Plan</i> Create contract administration plan to serve as guide</p> <p><i>Contract Manager</i> Appoint contract manager to facilitate agency-contractor communications</p>	T R A I N I N G
	<p><u>Implementation</u></p> <p><i>Performance Monitoring</i> Use contract administration plan Meet with contractors to clarify work Conduct on-site monitoring or inspections and follow-ups</p> <p><i>Payment Procedures</i> Link payment to satisfactory contractor performance</p> <p><i>Fiscal Monitoring</i> Understand the roles, responsibilities related to processing vouchers</p> <p><i>Documentation</i> Maintain organized contract files</p> <p><i>Problem Resolution</i> Handle complaints and use sanctions and penalties, if necessary</p> <p><i>Close-out Procedures</i> Use defined close-out procedures</p>	
	<p><u>Post-Contract</u></p> <p><i>Contract Evaluation</i> Conduct customer satisfaction surveys</p> <p><i>Financial Audit</i> Conduct post-contract financial audit</p> <p><i>Performance Evaluation</i> Evaluate the contractor's performance once the contract ends</p> <p><i>Cost-Benefit Analysis</i> Measure cost-effectiveness of contracting out services</p>	
	<p>SOURCE: Compiled by Program Review staff from other state and federal reports and audits.</p>	

Generally, the contract administration process includes the three broad areas: pre-contract, implementation, and post-contract. Within these broad areas are sub-activities that often take place when contracting for services. The pre-contracting phase includes planning, bid solicitation, contractor selection, formulation of contract provisions, creation of a contract administration plan, and appointment of a contract monitor, if necessary. The implementation phase includes contract monitoring and oversight, payment procedures, documentation, and close-out procedures. The post-contract phase includes evaluation, financial audit, performance audit, and cost-benefit analysis.

As represented in Chart 4.1, two areas are important across all stages, training, and policies and procedures. Training in contract administration is an integral part of the contract administration process and affects all phases. Adequate policies and procedures to guide agencies and contract administrators are needed to ensure the quality and consistency of the process.

Finance Cabinet Delegates Most Contracting Activity to the Agencies

The Finance and Administration Cabinet (Finance), the statutorily designated central procurement and contracting agency, has responsibility for all phases of contracting and an overall regulation and support role in the procurement process. It has the authority to develop specifications, promulgate administrative regulations, develop policies, supervise inventories, delegate purchasing authority, handle protests and disciplinary actions, and establish procurement councils and institutes for training and disseminating information. Chart 4.2 shows the contract phases in the procurement process and details what each phase includes. The chart shows who is responsible for each contract phase--the Finance Cabinet or the individual agencies. The areas which Finance handles are highlighted. Those handled by the individual agencies are shown in white. Basically, agencies handle personal service contracts (PSC) and interagency agreements such as memorandums of agreement (MOA) (Columns 4 and 5). For other types of contracts, agencies have responsibility for monitoring, payment requisition, product delivery acceptance, and any post-evaluations.

The role of the Finance Cabinet is most pronounced in the pre-contract phase for contracts other than PSCs and MOAs. Finance handles requisitioning, advertising, and evaluating and awarding price and purchase order service contracts. The Finance Cabinet handles all the aspects of the pre-contract phase of statewide price contracts. Finance determines the needs and requisitions the purchase, advertises for bids on the Internet, and evaluates and awards the contract. On the other hand, for price agency specific statewide contracts and purchase order contracts, Finance handles the advertising, the evaluation and award of the contract.

The Finance Cabinet's role in the implementation and the post-contract phase is very limited. During the contract execution phase, the contracting state agency performs the monitoring and oversight of all types of service contracts. Finance policy delegates this responsibility to agencies. The Finance Cabinet also expects the agency to handle any

problems, deviations, changes, or delays directly with the vendor. If the agency cannot resolve satisfactorily the problem with the contractor, the agency files a vendor complaint form with Finance's Division of Purchases in a timely manner. Then the Finance Cabinet handles the complaint. The Purchases Division has the right to begin disciplinary action if the documented problems are persistent or chronic. Such actions include suspensions, debarments, and reinstatements. According to Finance officials, the usual action is cancellation.

Finally, in the post-contract phase, Finance's Division of Accounts is responsible for payment after the agency provides documentation of contract compliance. Although the Finance Cabinet pays the bills, it relies on the agency to determine whether the contractor complies with contract provisions and outcomes.

CHART 4.2
FINANCE AND AGENCY ROLES IN THE CONTRACT PROCESS

CONTRACT PHASE	CONTRACT ACTIVITY	PSC	MOA PAC MOU	PRICE ALL AGENCIES	PRICE AGENCY SPECIFIC	PURCHASE ORDER CONTRACT
PRE-CONTRACT PURCHASING CYCLE	Requisition	A	A	F	A	A
	Advertising	A	-	F (Web)	F	F
	Evaluation Award	A	A	F	F	F
IMPLEMENTATION	Monitor	A	A	A	A	A
	Problem Resolution	A	A	A to F	A to F	A & F
	Change Orders	A	A	F	A to F	A & F
	Sanction	A	A	F	F	F
	Receipt of Product	A	A	A	A	A
	Authorization of Payment	A	A	A	A	A
POST AUDIT	Post Audit	A	A&F (If done)	-	-	-
CLOSE-OUT	Final Receipt	A	A	A	A	A
	Final Dispute Resolution	A	A	A & F	A to F	A to F
	Final Payment Approval	A	A	A	A	A
POST-CONTRACT PERFORMANCE EVALUATION	Performance Evaluation	A	A	(If done)	(If done)	(If done)

NOTE: "F" = Finance "A" = Agency.

Source: Compiled by Program Review staff.

Kentucky's Prison Privatization Statutes Follow Model Practices

Except for a new 1998 statute, no Kentucky statutes deal with contract administration per se. However, statutes allowing for the privatization of minimum-security state prisons stipulate the state's monitoring powers and duties related to the operation and management of the facilities. The General Assembly enacted KRS 197.500-530 in 1988, marking the first effort by a state to privatize prisons. Starting in July 1998, Corrections also may privatize medium security prisons. The state currently contracts with US Corrections Corp. (USCC) to operate three such prisons—Marion Adjustment Center at St. Mary, Lee Adjustment Center, Beattyville, and Otter Creek Correctional Center, Wheelwright. USCC also operates the River City Correctional Center in Louisville, a work-release program. In April, officials announced the sale of USCC, based in Louisville, to Corrections Corp. of America (CCA) of Nashville, TN. CCA is the world's largest private prison operator.

KRS 197.505 allows the state to enter into a contract with a private provider to establish, operate, and manage prisons. The statute sets out certain contractual provisions that the private provider must meet. In all these private prison contracts, the state must maintain supervisory and monitoring powers over the operation and management of the facilities. KRS 197.510 contains these provisions:

- Compliance with any applicable standards;
- Compliance with KRS 45A, the model procurement code;
- A written budget for the facility;
- A fiscal system that accounts for all income and expenditures on an on-going basis;
- An annual independent audit report;
- Written fiscal policies and procedures;
- A written policy for inventory control of all property and assets;
- A plan for disseminating information to the media;
- Background investigations for all employees prior to employment; and
- Unannounced inspections of the facilities.

Private prison statutes also specify that the state may withhold payments if required services, products, or facilities are not provided or maintained pursuant to the contract. The Department of Corrections has the authority to promulgate administrative regulations to govern the operation or management of the prisons, and to set standards. Finally, administrative fines may be assessed against the private provider, if necessary.

The prison contracts detail separate minimum requirements involving the operation of the facilities. The standards are, for the most part, taken from the American Correctional Association list of standards for adult correctional institutions. The standard for administration states that "each facility shall have a system to monitor programs through inspections and reviews by the administrator or designated staff." Department of

Corrections monitors routinely observe activities at the private prisons. KRS 197.515 requires Corrections to conduct annual performance evaluations on all private prisons. Corrections officials submit these evaluations to the Legislative Research Commission.

Finance Provides Agencies with Limited Guidance and Assistance

Formal written policies and procedures are recommended to provide guidance for staff in contract administration. A Kansas study found a vacuum in the area of policies and procedures for contract administration. Kansas agencies are left on their own to determine if state monitoring is necessary, what types of state monitoring mechanisms are most effective and appropriate, what procedures are best for handling complaints about a contractor's performance, and what remedial measures are available if the level of service is inadequate. Only one of the agencies that Kansas audited had written guidelines for administering and monitoring contracts.

Agencies need to know the correct policies and procedures for contract management. The Finance Cabinet has a policy dealing with contract administration. But, the policy is relatively short--filling less than half a typed page--and contains no specific contract management procedures. Rather, the policy indicates "the Division of Purchases relies on the agency to ensure the contract is being completed or performed as written." Few agencies reported having contract management manuals or formal policies, although most indicated they had contract administration procedures.

Program Review staff surveyed agencies regarding the services they received from Finance, additional assistance needed, and strengths and weaknesses in the current contract management system used by their agency or the state. Agency comments regarding Finance's services are shown in Chart 4.3. Four primary areas are identified, the most frequent being the provision of information and assistance, followed by assistance with the contracting process, resolution of vendor problems, and payment processing.

CHART 4.3
MAJOR AREAS OF ASSISTANCE
FROM FINANCE AND ADMINISTRATION CABINET
REPORTED BY AGENCIES

Information And Assistance (n=28) – Process information, guidance, problem solving, process and procedure explanation, policies, contract samples, training seminars

Contracting Process (n=16) - Helping agency ensure compliance with statutes and regulations, assisting in document preparation and contract review, assisting in bidding, assisting with approval process

Vendor Problems (n=8) - Assisting in handling complaints, and in ensuring contract compliance and statutory/regulatory compliance by vendor

Payment (n=4) - Processing payments, monitoring expenditures and expiration dates

SOURCE: Program Review staff survey of agencies, 1997.

NOTE: “n” = Number of respondents.

Chart 4.4 identifies the most frequently indicated strengths, weaknesses and recommendations regarding the current state and agency processes. The largest category in strengths was a general comment that the current system was adequate.

CHART 4.4 STRENGTHS/WEAKNESSES OF CURRENT CONTRACT ADMINISTRATION PROCESS AND SUGGESTIONS FOR IMPROVEMENT	
Strengths (n=39)	System Adequate (n=20) Contract Administration (n=6) – Contract review and tracking, open lines of communication, problem resolution Recent Efforts to Streamline Contract Process (n=3) Policies and Procedures (n=2) – Roles elaborated in contract, standard policies and procedures
Weaknesses (n=35)	Contract Process (n=14) – Complex, time-consuming, expensive Training (n=6) – Need training, lack trained personnel Workload (n=5) – Staff shortage, contract managers lack time, too many contracts Policies and Procedures (n=3) – No written contract administration plan, no formal monitoring policy
Suggestions (n=16)	Streamline Processes (n=6) Training (n=5) – Contract management Policies and Procedures (n=4) – Contract administration policy, monitoring policies, guidelines for specialized contracts, single point to oversee price contracts Vendor Performance Record (n=3) – Database with performance information, central resource for monitoring performance, communication between agencies on contractor performance Assistance (n=3) – Standard format for record keeping and performance recording, contract boiler plate, contract writing and necessary documentation
SOURCE: Program Review staff survey of agencies, 1997. NOTE: “n” = Number of agency responses.	

Weaknesses cited most often involved the contract process, with agencies characterizing it as complex, time-consuming, and expensive. The need for training and the lack of trained personnel was next most frequent. Staff shortages, insufficient time to manage, and too many contracts also were cited as weaknesses. Finally, the lack of written contract administration policies and procedures and formal monitoring policies

also was identified. Suggestions included: training, policies and procedures, more standardized record keeping and performance recording, and boilerplate formats for contracts and documentation. One suggestion not anticipated from the weaknesses identified by agencies was a need to maintain and communicate vendor performance information.

Training Is a Key Ingredient in Contract Administration Program

Some states emphasize the need for contract management training. Some problems can be avoided with centralized training, guidance, and assistance in contract administration. In addition, federal contract guidelines state that although training is ultimately the agency's responsibility, a minimum core curriculum could be developed for contract administrators and other contract staff. At least one national association offers training geared to state government. The National Institute of Governmental Purchasing (NIGP) offers a two-day contract administration seminar, and a seminar on service contracting. The seminar is an introductory level course geared to all purchasing officials, auditors, legal counsel, and operational personnel.

Both Virginia and Wisconsin's procurement agencies require contract administration training. Virginia's Division of Purchases and Supply offers courses in contract management and contract administration to state and local personnel. The courses also form a portion of the instruction blocks in the state's certification program for contracting officers. The Wisconsin's Bureau of Procurement's contract administration course is required for any purchasing director of an agency who has major delegation authority. It also is suggested for people who are involved in contracting.

A few agencies responding to the Program Review survey indicated that Finance has provided some training, but apparently the training entailed contract procedural issues rather than contract management. As a form of training, Finance's Division of Purchases posts tutorials for vendors on its Internet Web page, as well as information about seminars available throughout the state and the region. Human resources employees have contracted for training in performance measures and benchmarking to comply with federal requirements.

**CHART 4.5
REPORTED CONTRACT ADMINISTRATION
TRAINING**

Training Question	Percentage of Agencies
Specialized Training Required	13.6%
No Specialized Training Required	46.6%
Contract Administration Training	2.3%
Internal Contract Administration Training	25.0%
Outside Contract Administration Training	6.8%
On-The-Job Training Only	62.5%
Contract Administration Training Needed	39.8%

SOURCE: Program Review staff survey of agencies, 1997.

State agency personnel have expressed a need for more training, the agency survey shows. Chart 4.5 shows the training provided or required of the agency contract management personnel. Less than 14 percent indicate receiving specialized training, and almost 47 percent indicate no specialized training. Twenty-five percent indicate that some training is provided internally by their agency and 7 percent that some training is provided by people outside the agency. The majority, 63 percent, indicate that the primary method of training is on-the-job training. About 40 percent of the respondents indicate that training is needed. Personnel cited a need for training and suggested additional training in their responses to open-ended questions in the survey (Chart 4.4).

RECOMMENDATION: 2 FINANCE TRAINING AND GUIDANCE

In delegating authority to the agencies for all aspects of contract administration, the Finance Cabinet is responsible for ensuring that agencies are capable of performing their duties. The Finance Cabinet should develop a training program for agency personnel assigned responsibility for contract monitoring. Such a program could be developed through the Governmental Services Center. Finance should also organize periodic workshops, utilizing staff from state agencies with contract administration expertise, or utilize other resources, such as the training provided by the National Institute of Governmental Purchasing.

PRE-CONTRACT PHASE

State agencies seem to be using the basic methods for effective contract administration in the pre-contracting phase, although one problem area is the lack of general policies and procedures related to contract administrators. Activities in the pre-contract phase are an integral part of the contracting process. In this phase, agencies determine their needs and go about the task of finding the right contractor to do the job. The pre-contracting phase includes planning, bid solicitation and contractor selection, formulation of contract provisions, creation of a contract administration plan, and appointment of a contractor monitor, if appropriate.

State agency planning appears to be based on personnel requirements and particular circumstances. Although state agencies believe they do a good job detailing the services expected from contractors, they do not always set out clearly defined performance standards or sanctions in contracts. Just over a third of state agencies develop contract administration plans. Finance also lacks regulations, policies, or procedures regarding contract administrators.

Contract Planning Is Left to Agency Discretion

Planning needs to precede an agency's pre-contract endeavor. What needs to be done and why, what service delivery is the best approach, what workload variables may be expected, who will be the contract administrator, and what contract administration will be required are some issues to be addressed. Planning should include developing a statement of work with specific deliverables and benchmarks that can be managed and monitored. A needs assessment indicates what services, outputs, and outcomes are required and is a precursor to the actual contract. Inadequate planning can result in higher costs and may jeopardize the outcomes the agency needs. Planning

PRE-CONTRACT PHASE

- **Planning**
Develop needs analysis, work statement
- **Bid Solicitation**
Includes work statement, performance standards
- **Contractor Selection**
Process is fair, open, impartial, stimulates competition
- **Contract Provisions**
Statement of services expected, sanctions, penalties
- **Contract Administration Plan**
Details time lines, documentation, monitoring activities
- **Contract Administrator**
Facilitates communication, oversees contract performance

also helps to avoid contract delays, incomplete products and cancellations. Agency administration must determine whether a project is needed and the availability of funding before it proceeds with the project. Direct and indirect costs must be calculated, including the costs of administration and monitoring.

Until the passage of House Bill 332 in the 1998 regular session, agencies were not required to do detailed cost/benefit analyses for proposed contracts. As indicated earlier, the legislative Personal Service Contract Review Subcommittee requires that agencies submit a “proof of necessity” form (PON) with personal service contracts (and, as of July 15, 1998, MOAs as well). The PON asks for a justification of the need for an outside provider. For price contracts, the state agency purchase requisition is the lead document in which the specific purchase requirements are identified. On the other hand, cost analyses normally are not required.

HB 332, the new privatization statute passed by the 1998 General Assembly, will require detailed analyses. Before agencies enter into a certain privatization contract, they must determine the necessity and intended goals of the service, problems and inefficiencies with the current operation of the service, and whether the service can be provided efficiently by the agency.

One agency, the Cabinet for Economic Development's Procurement Assistance Program, reports using a manual that stipulates factors to be considered before using independent contractors. Questions to be considered include: Is the need for the contract clearly established? Have all costs been identified? Does the proposed contract comply with pertinent cabinet, state, and federal policies and procedures? And, have meaningful performance measures been set for the contract?

Agencies Satisfied with Contractor Selection Process

To ensure the highest quality service for the lowest price, contractor selection processes need to be fair, open, and impartial. Adequate competition must exist between potential service providers. A contractor's track record, quality, and references need to be considered.

Statutes outline the basic methods to be used for advertising and awarding contracts. Finance has issued related policies and procedures, monitors the process, and reviews some agency contracts. Approximately 81 percent of the Kentucky state agencies surveyed by Program Review indicated they are either satisfied or very satisfied that the best contractors are selected through the state's contractor selection procedures.

Contracts Detail Services, Use of Performance Criteria is Weak

State agencies believe they do a good job detailing services expected from contractors but many do not establish performance measures or define performance standards. It is generally recommended that contracts contain a clear statement of services expected and performance standards. Although 96 percent of the agencies surveyed believe they do a good job assessing performance, assuring timely performance and detecting problems (Chart 5.1), a large proportion do not formalize performance standards in the contract.

CHART 5.1
REPORTED ABILITY TO PERFORM CERTAIN CONTRACT
ADMINISTRATION FUNCTIONS
(Percent of Agencies)

FUNCTION	Not at All	Not Very Well	Well	Very Well
Assess Contractor Performance	0.0	3.6	60.2	36.1
Detect Problems in Time to Correct	0.0	8.5	64.6	26.8
Resolve Problems	1.2	4.8	59.0	34.9
Make Corrective Action Plan	0.0	6.1	64.6	29.3
Assure Timely Delivery/Performance	0.0	6.2	64.2	29.6
Measure Client Satisfaction	8.1	9.5	59.5	23.0
Measure Program Success	0.0	7.4	61.7	30.9
Measure Cost Effectiveness	0.0	12.3	61.7	25.9

SOURCE: Program Review staff survey of agencies, 1997.

Finance's policies stipulate that a contract must address the following elements: statement of work, contract specifications, contract deliverables, contractor personnel, termination of contract, fee schedule and indemnification provisions. Ninety-four percent of the agencies responding to the Program Review survey delineate contractor responsibilities as a tool in managing contracts (Chart 5.2). A total of 95 percent of those using that delineation find it useful or very useful. Similarly, 90 percent of all agencies delineate agency responsibilities; 96 percent of that number find the delineation either useful or very useful. A large portion of survey agencies, 92 percent, said they use contractor pre-meetings, with 95 percent of that number indicating such meetings are useful or very useful.

A small number of agencies responding, 36 percent, use contractor performance rating criteria. Eighty-eight percent of the 32 agencies using such rating criteria find the criteria useful or very useful.

The Department of Corrections' private prison contracts specify minimum requirements that are the basis for each prison's performance reports. The standards cover: administration; fiscal management; program audits; personnel; training; physical

plan; inmate law library; accommodation, sanitation, and hygiene; health services; food services; safety, security, and emergency procedure orientation; mail and visitation;

CHART 5.2
CONTRACT ADMINISTRATION PRACTICES AND REPORTED
USEFULNESS
(PERCENTAGE OF AGENCIES)

PRACTICE	PERCENT USING	NOT USEFUL	USEFULNESS		
			SOMEWHAT USEFUL	USEFUL	VERY USEFUL
Delineation of Contractor Responsibility	94.3	0.0	4.9	41.5	53.7
Delineation of Agency Responsibility	89.8	0.0	3.8	46.2	50.0
Contract Administration Plan	37.9	3.1	3.1	43.8	50.0
Sanctions or Penalty Clause	42.5	2.7	21.6	29.7	45.9
Contractor Performance Rating	36.4	3.1	9.4	43.8	43.8
Enforcement Clauses	43.0	2.6	7.9	47.4	42.1

SOURCE: Program Review staff survey of agencies, 1997.

inmate rights; inmate telephones; general issues; academic and vocational education; inmate canteen; and records. Corrections periodically submits performance reports to the LRC for review.

A Third of Agencies Use Contract Administration Plans

According to the agency survey (Chart 5.2), only 38 percent of agencies use contract administration plans; of those, almost 94 percent find them useful or very useful. Kentucky agencies are not alone in regard to low use of contract administration plans. The out-of-state survey found that only three of 15 states surveyed use contract administration plans. There are no Finance and Administration regulations, policies or procedures dealing with contract administration plans.

Contract administration plans are essential for good contract administration, according to the federal *Guide to Best Practices for Contract Administration*. According to the Guide, development of a contract administration plan provides a systematic, structured method for the contract administrator to evaluate services and products. Such plans can be simple or complex, but should detail the performance outputs expected from a contract and describe how inspections or monitoring will be conducted. The focus should be on these key portions of the contract. Contract administration plans should cover the following elements:

- Contract overview including a statement of work summary;
- Roles and responsibilities of individuals who oversee and manage the contractor;
- Communications with the contractor and subcontractors; and
- Contract management and administration through close-out.

RECOMMENDATION 3: ENFORCEMENT, PERFORMANCE ASSESSMENT, MONITORING AND DOCUMENTATION POLICIES

The Finance and Administration Cabinet should require agencies to include in all service contracts, provisions related to enforcement, performance assessment, monitoring and documentation. Finance should develop model guidelines based upon the various major categories of contracts, to assist the agencies and provide training to assist agency legal staff in drafting such provisions.

No Policies About Contract Administrators

Contract administrators are responsible for a wide variety of communications and oversight duties, which fall into three categories--communications, monitoring and reporting. According to NASPO, one of the principal duties of the contract administrator is to maintain the lines of communication developed in the contract and at the start-up conference. The contract administrator is a point of contact for the contractor and the agency if minor or substantial changes are necessary. The contract administrator monitors the work of the contractor to ensure actual progress against work schedules. Another monitoring duty is to review and approve the contract deliverables against outcomes that are written into the contract. Finally, the contract administrator maintains accurate documentation and files a track record of the contractor's performance.

An effective contract administrator monitors all complaints against contractors and evaluates the contractor's effectiveness in dealing with the complaint. The contract administrator reviews incident reports, the remedial steps taken, transactional data, data on timeliness of service delivery, and data on revenues and expenditures in comparison to the contract budget. He may maintain a log of individual deficiencies and identify trends that require attention. One use of such a log is to ensure that corrective actions are taken in a timely fashion. He should hold periodic meetings to review status, discuss new issues and follow-up. Good communication requires dealing with issues before they arise. Both the contractor and the state agency must establish that successful performance is mutually beneficial to both parties.

Finance has no regulations, policies or procedures requiring the appointment of contract administrators or monitors, nor does it define any duties or functions to be performed. The Personnel Cabinet has two classifications for contract administrators--grants and contract specialist, and grants and contract administrator. According to the job

descriptions, the specialist performs professional work in the development and review of contracts for program services or grant applications. The administrator develops and reviews grant applications or contracts for third party provision of program services and administers the implementation of approved grants and contracts.

According to the agency survey, in the majority of cases, the department using the service is assigned responsibility for managing the contract (Chart 5.3). In over a quarter of the cases, a central office agency person is assigned responsibility as one of his other duties. Usually this is a budget or fiscal person, agency legal counsel, or some other central office administrator. Few agencies appoint specific contract administrators or use outside agencies to perform management. In a few cases (8 percent, seven agencies), full-time contract administrators are used. The average (mean) number of full-time equivalent staff responsible for contract administration is 5.9, ranging from 0-105 FTE. The average number of full-time persons is .6, with a range from 0-12.

Senate Bill 390, passed in the 1998 regular session, authorizes performance bonds and performance audits of certain types of contracts. The bill also defines the agency contract administrator as the employee responsible for the administration of a contract, and defines certain responsibilities, including:

- Evaluating the need for a performance bond, with documentation;
- Making a performance audit at regular intervals; and
- Reviewing the performance audit and determining in writing whether contract compliance is complete

**CHART 5.3
TYPE OF MANAGER
AND PERCENT OF TIME USED
(PERCENT OF AGENCIES)**

PERCENT OF CONTRACTS USED

TYPE OF MANAGER	0%	1-25%	26-33%	34-50%	51-67%	68-75%	76-100%
Centralized manager(s) monitors contracts as primary duty	84.1	5.7	1.1	3.4	0.0	0.0	5.7
Centralized manager(s) monitors contracts as a secondary duty	60.9	4.6	2.3	10.3	2.3	0.0	19.5
Department using the service manages its own contracts	34.1	1.1	1.1	6.8	2.3	3.4	51.1
Other outside agency manages contracts	93.1	3.4	0.0	0.0	0.0	0.0	1.1
Agency appoints a contract officer	96.6	1.1	0.0	0.0	1.1	0.0	1.1
No monitoring occurs	6.6	1.1	0.0	0.0	0.0	1.1	1.1

SOURCE: Program Review staff survey of agencies, 1997.

RECOMMENDATION 4: DEFINE CONTRACT ADMINISTRATOR ROLES AND RESPONSIBILITIES

The Finance and Administration Cabinet should define the roles, responsibilities and necessary expertise for agency personnel serving as full-time or part-time contract administrators. This defining should be in line with the professional standards Finance now requires agencies to follow in administering contracts.

VI

CONTRACT IMPLEMENTATION PHASE

Sixty-four percent of state agencies say they use on-site monitoring, one of the key elements in the contract implementation phase. Other activities in the implementation phase include payment procedures, documentation, and close-out procedures. Agency contract management methods vary from formal to informal. Generally, agencies believe they are able to perform a variety of contract management tasks either "well" or "very well."

The Finance and Administration Cabinet (Finance) places the responsibility on using agencies to verify deliverables and authorize payment based on contract terms. Finance's policies mainly emphasize payment procedures. Agencies are required to administer contracts according to sound principles of purchasing, but these are not elaborated on. Finance leaves initial problem resolution in the hands of agencies. Most agencies believe they do a good job resolving problems, receiving help from Finance when needed.

IMPLEMENTATION PHASE

- **Performance Monitoring**
Monitoring includes use of plan, on-site inspection, follow-ups
- **Payment Procedures**
Payment is linked to satisfactory performance
- **Fiscal Monitoring**
Understanding the responsibilities related to vouchers
- **Documentation**
Well organized files important
- **Problem Resolution**
Complaints handled with sanctions, penalties possible
- **Close-out Procedures**
Defined close-out procedures should be used

Contract Oversight Is Agency Responsibility

During the contract implementation phase, the central focus of contract administration is ensuring the success of the contract through monitoring and oversight. Monitoring is essential to protect the public interest by guarding against mismanagement and waste of public funds, fraud, or poor service delivery. Quality monitoring enables the state to get its money's worth. The National Association of State Purchasing Officials (NASPO) notes that contract monitoring is often one of the most neglected parts of the procurement process, with procurement officials perhaps believing that "no news is good news."

Monitoring is the routine, ongoing review of the contractor's performance by comparing work completed to the contract specifications, reviewing expenditures or billings, ensuring compliance with the terms and conditions of the contract, and resolving problems. Contract monitoring activities should include on-site inspections, complaint follow-ups, periodic audits, user surveys or interviews, review of deliverables, review of reports, and recommendations with solutions to problems. According to NASPO, the intensity with which a contract is monitored depends on the type, duration and complexity of the agreement. Small dollar contracts, or contracts for short time periods or one-time purchases, require very little oversight, while large financial transactions or complex contracts require much more scrutiny.

The Program Review staff examination of various studies and reports, in addition to the out-of-state survey, found that in most states, as in Kentucky, day-to-day contract monitoring takes place at the agency level. Generally, in other states, the chief procurement agency has responsibility, authority, and accountability over all contracts. In many instances, the chief procurement agency may delegate broad responsibility to agencies to oversee and administer their own contracts. In these instances, the chief procurement agency's responsibility is limited to monitoring compliance with procurement law and the delegation agreement. Usually, a using agency's staff administers its own contracts. On the other hand, if the chief procurement agency awards a contract, the officer also administers it directly.

Agencies Are Satisfied with Their Contract Management and Monitoring

The survey asked agencies to describe their contract management processes and procedures. Descriptions were broad and general but indicated a range of processes from informal to formal. Generally, agencies monitor or ensure that they receive an appropriate product before submitting payment requests. This could be an actual product or a status report regarding the product. Many agencies indicated that the service was of a type that lent itself to easy evaluation, e.g., janitorial services--"It's either clean or not."

The out-of-state survey found states mixed in their use of three management tools related directly to contract monitoring: pre-meetings with contractors to clarify work, on-site monitoring or inspections for contract progress, and follow-up monitoring or inspections. Seven of the states surveyed use these tools.

Agencies were asked to indicate how well they were able to perform a variety of contract-management-related tasks. They were asked to indicate their ability on a four point scale from "Not at All" to "Very Well." The results are shown in Chart 6.1. As for ensuring receipt of the product or service, generally 80-plus to 90-plus percent of the agencies responded to all tasks with "Well" or "Very Well." Ninety-six percent believe they were able to assess contractor performance. Ninety-one percent believe they could detect problems soon enough to take corrective action, while 94 percent believe they could develop corrective action plans to remedy unacceptable contractor performance, and 94

percent believe they could resolve problems with contractors. Similarly, 94 percent believe they could ensure timely delivery of services. Sixty-four percent of state agencies (55) report monitoring or inspecting progress. Of these, 54 found this useful or very useful (Chart 6.2). Some agencies indicate they require a great deal of reporting and documentation from the contractor and vary the procedures used, based upon the complexity of the contract, the value of the contract or the type of service (Chart 6.3). Agency descriptions, however, indicate that the primary focus of these processes and procedures is on payment requests and authorization (which require confirmation of contractor compliance with contract deadlines) and acceptance of the final product.

CHART 6.1
REPORTED ABILITY TO PERFORM
CONTRACT ADMINISTRATION FUNCTIONS
RELATED TO IMPLEMENTATION PHASE
(Percent of Agencies)

Function	Not at All	Not Very Well	Well	Very Well
Assess contractor performance	0.0%	3.6%	60.2%	36.1%
Detect problems in time to correct	0.0	8.5	64.6	26.8
Resolve problems	1.2	4.8	59.0	34.9
Corrective action plan	0.0	6.1	64.6	29.3
Assure timely delivery/performance	0.0	6.2	64.2	29.6

SOURCE: Program Review staff survey of agencies, 1997.

CHART 6.2
CONTRACT ADMINISTRATION PRACTICES
AND REPORTED USEFULNESS
IMPLEMENTATION PHASE
(PERCENTAGE OF AGENCIES)

PRACTICE	PERCENT USING	USEFULNESS		
		Not Useful	Somewhat Useful	Useful
Pre-meeting w/contractor	92.0	0.0	5.0	
Corrective action	53.4	4.2	14.6	3
User/client survey	35.6	0.0	6.7	4
Complaint follow-up	68.2	1.7	5.1	6
Monitor/inspect progress	64.0	0.0	7.4	3
Follow-up monitoring	53.6	0.0	7.0	5
Close-out Procedures	58.6	1.9	17.3	4

SOURCE: Program Review staff survey of agencies, 1997.

CHART 6.3
FACTORS CAUSING VARIATION IN CONTRACT
ADMINISTRATION APPROACH

Factor	Agencies Using - (%)
Method of contracting	15.9%
Type of contract	22.7
Nature of work	26.1
Complexity of work	28.4
Dollar amount of contract	22.7
Method of payment	17.0
Familiarity, experience with contractor	19.3

SOURCE: Program Review staff survey of agencies, 1997.

A Labor Cabinet official said his agency "monitors its agreements to ensure quality, timeliness, and cost efficiency." For example, the official reported that directors in the Cabinet's Occupational Safety and Health Program monitor memorandums of agreement for consultative and laboratory services "by assigning duties, evaluating performance, and verifying costs."

In addition, an Auditor of Public Accounts official indicated that a senior audit or audit manager is assigned to perform continuous monitoring. Monitoring is done at the job site or periodic reviews, and through regular contacts with the agency being audited regarding the work of the contractor. Both the cabinets for Families and Children, and Health Services have been receiving training in performance/outcome measures and benchmarkings to improve contract monitoring.

The Department of Corrections may have one of the most elaborate on-site monitoring systems at the private prisons. One monitor is stationed full-time at the Marion Adjustment Center, while other monitors alternate between Lee Adjustment Center and Otter Creek Correctional Center. The monitors speak daily with officials at the Frankfort central office. They complete daily compliance checklists and submit weekly reports to the central office.

Emphasis Is on Payment Procedures and Fiscal Monitoring

Various reports and audits say an agency payment approval process should be linked to satisfactory performance by the contractor. Fiscal monitoring ensures that all laws, regulations and other requirements about expenditures are followed. The federal contract administration guide notes that voucher processing is just as important as any other aspect of contract administration. An agency should expect the contractor to meet all contract requirements for quality, quantity, and timeliness. The contractor should expect no less from the government in meeting its obligation for timely, accurate payment for services and supplies. Thus, it is important for procurement officials to understand

clearly their roles and responsibilities related to reviewing and processing vouchers, the guide says.

As indicated earlier, Finance places responsibility on the using agency to verify deliverables and authorize payment based upon contract terms. Agencies must submit a statement of compliance with the payment request submitted to Finance. Finance does not verify performance, and most agencies rely on contract administrators to determine compliance by either a review of work performed or by a contractor performance report. Finance has responsibility for certain pre-audit functions or allows agencies to assume that authority. Pre-audit consists of an independent, outside verification of the validity of claims. Items verified often include mathematical accuracy, authorized signatures, price contract amounts, encumbrances, expenditure or receipt account numbers, and conformance with any applicable rules, regulations, or legal requirements.

An audit of the KIRIS school testing contracts criticized “certain contract management processes, including the management of changes in scope and invoicing.” The audit noted that funds paid to the contractor did not always seem to coincide with work performed. Ironically, the firm conducting the audit indicated that it was unable to match contract deliverables to invoices and thus was not able to complete the audit. The \$38 million, multi-year contract was eventually cancelled because of concerns regarding the validity of the tests developed.

The latest Kentucky single audit (1995) conducted by the Auditor of Public Accounts of federally funded programs found several examples of monitoring problems. The Department of Social Insurance (DSI) was criticized for failing to adequately monitor low-income heating program expenditures. DSI also was criticized for failing to monitor certain food stamp issuance sites. Finally, the Department of Personnel was criticized for not monitoring computer controls related to the processing of claims for the Kentucky KARE medical insurance plan.

The petroleum tank fuel-storage removal fund, a \$37 million program, came under public scrutiny in 1997. The fund pays contractors to remove contaminated fuel tanks to comply with federal requirements. Criticisms were raised about lack of contractor oversight. The state Attorney General's Office reviewed several tank removal jobs and the state Highway Department reviewed tank removal work with millions in cost overruns. Fund officials admitted the program was essentially an honor system. The Public Protection Secretary testified to a legislative committee in February 1998 that on-site monitoring had been strengthened.

The State Auditor reported in October 1997 that the third-party administrator, Plan Source, mismanaged the Health Purchasing Alliance's (HPA) money. HPA is an insurance purchasing pool created under health insurance reform. The preliminary audit indicated the alliance's problems resulted from lack of expert staff members to adequately oversee Plan Source.

Finance Requires Agencies to Maintain Records, Compliance Unknown

Contract administration literature stresses the need to maintain organized contract files. A contract file should be so organized that someone could reconstruct and understand the history of the contract in the absence of a contract administrator. At a minimum, such files should contain a description of requirements, sources solicited, the method of evaluation and award, a signed copy of the contract or purchase order, comments on vendor performance, and any other information related to the procurement.

Finance policies stipulate that each agency is to “maintain records necessary to support each purchasing transaction.” The policy lists those documents that are supposed to be kept in the purchasing file. The policy notes that the filing system must be set up “so that any transaction can be referenced easily and audited from requisition to completion.” However, the policy does not say what files need to be maintained relative to actual contract administration.

Lack of adequate documentation of contractor performance, contract amendments and changes, and other agreements was a key finding by an independent auditor hired to review the Department of Education’s KIRIS contract (mentioned earlier).

Corrections indicates it keeps extensive files on the private prisons. A central office Corrections official maintains separate files for each section on the Legislative Research Commission (LRC) performance report for each of the three minimum-security private prisons.

Less Than Half of Agencies Use Formal Enforcement Processes

Not all contracts are successful. Contract administration guidelines stress contract provisions dealing with complaint resolution, sanctions, and enforcement clauses. The out-of-state survey found that the most frequently used contract management tool was employment of enforcement clauses to compel vendor performance. Ten of the states use those clauses. Nine states said they use formal sanctions or penalty clauses for inadequate performance.

An effective contract manager monitors all complaints against contractors and evaluates the contractor's effectiveness in dealing with the complaint. The project manager reviews incident reports, the remedial steps taken, transactional data, data on timeliness of service delivery and data on revenues and expenditures in comparison to the contract budget. Another practice is to maintain a log of individual deficiencies and identify trends that require attention. Such a log helps to ensure that corrective actions are taken in a timely fashion.

According to Finance, state agencies should try to resolve relatively minor problems with a vendor through informal resolution of the problem. If the vendor does

not respond satisfactorily, the state agency should file a vendor complaint report immediately with the Division of Purchases, saying that a problem exists. Purchases has the right to begin punitive action if documented problems are persistent or chronic. Purchases has a list of over a dozen grounds for disciplinary action. These actions range from probation or suspension or a combination of both for not more than 12 months, to removal from source lists for certain periods of time, to outright suspension from bidding or participating in contracts.

Over 68 percent of agencies indicated they use complaint follow-up procedures, as shown in Chart 6.2, with 93 percent of that number finding such follow-ups to be useful or very useful. But, when it comes to taking tougher measures against contractors, the numbers drop. Just over half of the respondents, 53 percent, use corrective action plans. Of these, over 81 percent find them useful or very useful. As reported in Section V, Chart 5.2, only 43 percent of respondents use formal sanctions and penalty clauses, with three-quarters of that number finding them useful. Further, only 43 percent of agencies use enforcement clauses to compel sanctions; of that number, 89 percent found them to be either useful or very useful.

Sixty Percent of Agencies Use Defined Close-Out Procedures

Formal close-out procedures are recommended. For the most part these procedures are those necessary to authorize final payment, obtain legal closure to the contract, or determine, whether a continuation contract is needed. According to the federal guide, contract close-out begins when the contract has been physically completed, when all services have been performed and products delivered. Close-out is completed when all administrative actions have been completed, all disputes settled, and final payment has been made. The process can be simple or complex, depending on the type of contract. The process also requires close coordination between agency contract officials, like the contract administrator, and the contractor.

Almost 59 percent of survey agencies said they use defined close-out procedures, as shown in Chart 6.2. Of that number, 81 percent find the procedures to be either useful or very useful. Most agencies report that these procedures are generally informal at best. Some involve the release of encumbered funds or percentage set-asides, exit conferences with the contractor and final review of contract deliverables.

RECOMMENDATION 5: FINANCE SHOULD IDENTIFY THE PRINCIPLES IT REQUIRES AGENCIES TO FOLLOW

Finance Cabinet regulations require that agencies administer contracts in accordance with sound principles of effective purchasing. This report outlines the major principles recommended by federal, state, and private organizations. The Finance Cabinet should identify these “sound principles” in its regulations and provide necessary guidelines and policies for using them.

VII

POST-CONTRACT PHASE

Evaluation at the end of a contract is a vital part of contract administration, but just over a third of state agencies report utilizing a key element of that evaluation—the user/client survey. Along with evaluation, the post-contract phase includes financial audit, performance audit, and cost-benefit analysis.

The agency survey showed just over half of Kentucky's agencies, 52 percent, conduct post-contract audits. Also, only 43 percent conduct post-contract performance evaluations. Kentucky agencies are not required to perform cost-benefit analyses, although this will change in certain circumstances with the privatization bill (HB 332) passed in the 1998 session of the General Assembly.

POST-CONTRACT PHASE

- **Contract Evaluation**
Conduct customer surveys
- **Financial Audit**
Conduct post-contract financial audit
- **Performance Evaluation**
Evaluate contractor's performance once contract ends
- **Cost-benefit analysis**
Measure cost-effectiveness of contracting

Post-Contract Evaluation Is Weak Among Agencies

Evaluations can help identify fraud, waste, or the inefficient use of public resources and help identify contractors with negative performances. Evaluations also help identify the contract costs and benefits, improvement needs, and problems. Some questions that should be answered are: Did clients receive the most appropriate services? Did contractors have a system for measuring client progress? Were services based on appropriate assessments?

Generally, the contracting agencies are responsible for evaluating their contracts. This area of contract administration is reportedly weak in many states. Both post-contract performance evaluations and post-contract audits or reviews are used by only five of the states surveyed. In addition, defined closeout procedures are used, to a limited extent by only four states.

Just over a third of Kentucky's state agencies report utilizing user/client surveys; however, most agencies using surveys believe they are useful or very useful (Chart 7.1). The Labor Cabinet does not use formal vendor surveys; however, it does critique a vendor's performance by asking affected department heads to answer a series of questions about the vendor. The Adult Education and Literacy Commission, the Economic Development Cabinet, and the Office of Financial Management and Economic Analysis report using formalized surveys. Several other agencies report that they use surveys on an informal basis.

CHART 7.1
REPORTED ABILITY TO PERFORM CERTAIN CONTRACT
ADMINISTRATION FUNCTIONS
(Percent of Agencies)

Function	Not at All	Not Very Well	Well	Very Well
Measure client satisfaction	8.1	9.5	59.5	23.0
Measure program success	0.0	7.4	61.7	30.9
Measure cost effectiveness	0.0	12.3	61.7	25.9

SOURCE: Program Review staff survey of agencies, 1997.

Half the State's Agencies Perform Post-Contract Financial Audits

Agencies may need to conduct post-contract financial audits to verify charges, costs, or program expenditures. Monitoring accounting controls is important to ensure that state and federal funds are used correctly and that taxpayer dollars are used beneficially. Reviewing accounting controls in conjunction with a performance evaluation is essential to an overall assessment of the contractor.

The Kentucky agency survey showed that just over half of state agencies, 52 percent, conduct post-contract audits. Of the 46 agencies conducting such audits, 89 percent found them either useful or very useful. The office of the State Auditor also has audit authority over contracts and the legislature also can direct contract audits or reports.

Less Than Half of State Agencies Evaluate Contract Performance

Agencies also should evaluate a contractor's performance within a short time after completion of a contract. This may involve only a portion of contracts selected based upon a risk assessment. Some states use a formalized assessment methodology to

determine what contractors to review and the level of review that is warranted. This practice enables the state agency to use the limited resources it has for monitoring in the most efficient manner. Past experience with a contractor often influences the risk assessment.

A high percentage of agencies responded that they could measure the success or effects of services either “Well” or “Very Well.” The lowest rating was for the ability to measure client satisfaction; 82 percent of the agencies said they could do this. Even higher self-ratings were given for agencies' abilities to measure program success (93 percent) and measure cost effectiveness (88 percent). However, only 43 percent of Kentucky's agencies report conducting post-contract performance evaluations. Of those that do, 87 percent find performance evaluations to be either useful or very useful. The Labor Cabinet reports it has a very formalized process and manual for post-contract evaluations to be submitted to LRC. As indicated earlier, Kentucky's prison privatization statute (KRS 197.500-530) requires annual performance evaluations to be submitted to LRC. Federally funded programs are now being required to develop performance evaluation and monitoring systems.

Evaluations of contractor performance are important sources of information for other agencies. Some agencies cited the lack of communication between agencies about contractor performance as a weakness of the current system (Chart 4.4). These agencies said it would be very helpful to know other agency's experiences. State personnel suggested that this information be maintained in a central location accessible to all agencies.

RECOMMENDATION 6: CONTRACTOR PERFORMANCE INFORMATION FILE

The Finance Cabinet should require agencies to submit a record of complaints and problems encountered during a contract and agency satisfaction with the resolution. In addition, Finance should develop a post-contract evaluation form for the agency to rate the contractor's performance, strengths, and weaknesses. This documentation should be maintained in Finance by contractor and available to the agencies.

Cost-Benefit Analyses Required for Privatization Contracts

A sometimes overlooked aspect in government contracting is a cost-benefit analysis of the contract. Such factors as cost savings, maintenance of quality, efficiency, effectiveness, employee impact, and asset usage are often considered. Some states with formal privatization processes require their agencies to analyze the cost/benefits of the privatization proposal by comparing the costs of government providing the service versus the cost of outsourcing for the service.

For the most part, Kentucky agencies believe they do a good job measuring the cost effectiveness of service contracts they administer. Over 88 percent said they measure cost effectiveness either well or very well. However, 43 percent of state agencies do a post-contract performance evaluation; only 52 percent do a post audit; and only 36 percent do user or client surveys or interviews.

Kentucky agencies have not been required to perform such analyses in the past. These analyses were recommended by the now defunct Kentucky Privatization Commission. Effective July 15, 1998, agencies will be required to do cost-benefit analyses on certain privatization endeavors. The Program Review and Investigations Committee recommended in 1995 that this be done for privatization decisions in general and specifically with marina lease decisions in the Department of Parks. Legislation was introduced in the 1996 regular session to require this but was not enacted.

The Labor Cabinet indicates cost effectiveness (benefits) studies are a part of its procedures. Federally funded programs also are being required to implement cost benefit analyses and performance evaluations as a result of the federal Government Performance and Results Act of 1993.

RECOMMENDATION 7: POST-CONTRACT REVIEWS

Finance should require agencies to perform post-contract reviews for services of a recurring nature or certain dollar threshold. These reviews should evaluate the effectiveness of the service; costs and potential cost savings related to the contract for the service; and, strengths, weaknesses, and improvements for future contracts. Agencies should be required to document these reviews, maintain copies with the contract files, and submit copies to the Finance Cabinet for maintenance in Finance contract files.

APPENDIX A
CONTRACT MANAGEMENT SURVEY

Contract Management Survey

Please use a separate sheet for open-ended questions where necessary.

Agency/Department: _____ SURVEY SUMMARY N= 88 _____

For purposes of this survey, contract management refers to those activities related to monitoring and evaluating a vendor's performance in fulfilling the terms of a contract, and ensuring that the services received are timely, of designated quality, and in compliance with contract agreements. Please confine your responses to **contracts for services only**, and **not** contracts for construction or commodities.

1. Of the "for services" contracts administered by your agency in the current biennium, what number are in the form of: (Please enter a number in the corresponding blanks.)

5423	1874	Personal Service Contracts
	1174	Memorandums of Agreement (MOAs)
	1392	Program Administrative Contracts (or other exempt from Finance Cabinet oversight)
	983	Other for Services Contracts
	53176	PROVIDER AGREEMENTS

2. Of the "for-services" contracts administered by your agency in the current biennium, what number are for: (Please enter a number in the corresponding blanks.)

3047	Direct services provided to clients of your agency
1842	Administrative services for operations of your agency

3. Since 1992, what has been the trend in your agency's contracts for direct services to clients and contracts for administrative services for the agency? Please check the most appropriate box for each of the two service categories.)

Service Category	Decreased Significantly	Decreased Somewhat	Stayed the Same	Increased Somewhat	Increased Significantly
Client Services	0%	2.9%	57.1%	28.6%	11.4%
Administrative	2.6%	5.3%	47.4%	38.2%	6.6%

4. How satisfied are you that the state's contractor selection procedures ensure that the best contractors are selected. (Please check the most appropriate box.)

Not at all satisfied	Somewhat satisfied	Satisfied	Very satisfied
3.5%	15.3%	70.6%	10.6%

5. For the "for-services" contracts your agency administers, how well are you able to: (Please check the most appropriate box for each.)

	Not At All	Not Very Well	Well	Very Well
Assess overall contractor performance	0%	3.6%	60.2%	36.1%
Detect problems in time to take appropriate corrective action	0%	8.5%	64.6%	26.8%
Resolve problems with vendors	1.2%	4.8%	59.0%	34.9%
Propose corrective action for unacceptable contract performance	0%	60.1%	64.6%	29.3%
Assure timely delivery or performance of services	0%	6.2%	64.2%	29.6%
Measure client satisfaction	8.1%	9.5%	59.5%	23.0%
Measure program success	0%	7.4%	61.7%	30.9%
Measure cost effectiveness	0%	12.3%	61.7%	25.9%

6. In the space below, please describe in detail how your agency manages the "for-service" contracts it administers. In your description, please identify the persons involved in the process, and how the process may differ for contracts for "client-services" Vs "agency administrative services." *(Please use a separate sheet of paper if you need more space.)*

7. a) Does your agency use the following tools to manage contracts? (Please answer **YES** or **NO** in the first column.)

b) If **YES**, how useful are they in helping you measure vendor performance and ensure quality, timeliness and cost efficiency? *(Please place a number in the corresponding blank in column (b) next to each tool, using the following scale:)*

Not at all useful	Somewhat useful	Useful	Very Useful	
(1)	(2)	(3)	(4)	
Management Tools			a) Do You Use Y/N	b) How Useful
Pre-meetings with contractors to clarify work to be performed			Y/ 92.0%	2.51
Delineation of contractor responsibilities			Y/ 94.3%	2.49
Delineation of agency responsibilities			Y/ 89.8%	2.46
A contract administration plan			Y/ 37.9%	2.41
Formal sanction or penalty clauses for inadequate performance			Y/ 42.5%	2.19
Defined close-out procedures			Y/ 58.6%	2.13
Corrective action plan for inadequate contract performance			Y/ 53.4%	2.19
Criteria for contractor performance rating with documentation			Y/ 36.4%	2.28
Enforcement clauses to compel vendor performance			Y/ 43.0%	2.29
User/Client surveys or interviews			Y/ 35.6%	2.40
Complaint follow-up			Y/ 68.2%	2.22
On-site monitoring or inspections for contract progress			Y/ 64.0%	2.46
Follow-up on-site monitoring or inspections after initial inspections			Y/ 53.6%	2.33
Post contract audit/review			Y/ 52.3%	2.27
Post contract performance evaluations of contractors			Y/ 43.2%	2.24

(Mean)

8. Do your agency's contract management procedures vary based on any of the following factors? (*Please answer **YES** or **NO** in the corresponding blank.*)

Y/ 15.9%	Method of contracting (i.e. RFP, ITB, etc.)
Y/ 22.7%	Type of contract (i.e., MOA, PSC, MOU, program administration other)
Y/ 26.1%	Nature of work (i.e. direct services for clients or administrative services for agency).
Y/ 28.4%	Complexity of work
Y/ 22.7%	Dollar amount of contract
Y/ 17.0%	Method of payment (i.e. fixed price, cost reimbursement, billable hours, other)
Y/ 19.3%	Familiarity, experience with contractor

8b. If you answered **YES** to any of the above, please explain how your procedures vary.

9. Of the "for-services" contracts administered by your agency, how many are managed in the following manner? (*Please estimate the percentage in the corresponding blank next to each statement.*)

7.84%	Centralized manager(s) monitors contracts as primary duty.
26.95%	Centralized manager(s) monitors contracts as a secondary duty.
58.81%	Department using the service manages its own contracts.
3.86%	Other outside agency manages contracts (please explain).
1.88%	Agency appoints a contract officer (please explain).
2.0%	No monitoring occurs.

10a. What is the estimated number of full-time equivalent (FTE) personnel with contract management responsibility in your agency? (*Please enter a number in the corresponding blank below.*)

5.92 (mean)

0-105 (Range) FTE personnel

10b. How many of the FTE personnel indicated in question 10a manage contracts on a full-time basis? (*Please enter a number in the corresponding blank below.*)

.59 (mean)

0-12 (Range) FTE employees managing contracts on a full-time basis

11. How does the Finance and Administration Cabinet assist you in managing your contracts; and what more could they do to assist you? (*Please explain in the space below.*)

12. Which of the following sentences below apply to the training of the staff with contract administration responsibilities in your agency? *(Please check all that apply.)*

Y/ 13.6%	Contract management personnel receive specialized training in contract administration.
Y/ 46.6%	Contract management personnel receive no specialized training in contract administration.
Y/2.3%	Specialized contract administration training is required for contract managers.
Y/ 25.0%	Specialized contract administration training is provided internally by agency personnel.
Y/6.8%	Specialized contract administration training is provided by persons outside the agency.
Y/ 62.5%	Contract management personnel receive <u>only on-the-job</u> contract administration training.
Y/ 39.8%	More contract administration training is needed.

13. In the space below, please indicate any strengths and/or problems or weaknesses in contract management as it exists now in your agency and in state government. Please indicate what ought be done differently.

14. In the space below, please identify any specific contracts that represent contract administration problems and/or successes within your agency.

Contract	Explanation Of Problem Or Success

If your agency has written policies and procedures on contract administration, please attach a copy.

APPENDIX B

SMALL PURCHASE AUTHORITY DELEGATIONS AND QUOTATION REQUIREMENTS

SMALL PURCHASE AUTHORITY DELEGATIONS AND QUOTATION REQUIREMENTS

AS OF: APRIL 21, 1998

For Commodities and Services

For Construction

Agency	Limit	1 Quote if < than	3 Quotes if < than	5 Quotes if < than	Limit	1 Quote if < than	3 Quotes if < than
Standard	\$1000	\$1000	NA	NA	\$10,000	\$3,000	\$10,000
Finance	\$20,000	\$5,000	\$10,000	\$20,000	\$20,000	\$7,500	\$20,000
Transportation	\$15,000	\$4,000	\$10,000	\$15,000	\$20,000	\$7,500	\$20,000
CHS	\$15,000	\$4,000	\$10,000	\$15,000	\$15,000	\$5,000	\$15,000
CFC	\$15,000	\$4,000	\$10,000	\$15,000	\$15,000	\$5,000	\$15,000
Parks	\$10,000	\$4,000	\$10,000	NA	\$20,000	\$7,500	\$20,000
Fair Board	\$5,000	\$3,000	\$5,000	NA	Standard		
Labor	\$5,000	\$3,000	\$5,000	NA	Standard		
Correct.	\$5,000	\$3,000	\$5,000	NA	\$20,000	\$7,500	\$20,000
KDE	\$5,000	\$3,000	\$5,000	NA	\$20,000	\$7,500	\$20,000
Gov.	\$5,000	\$3,000	\$5,000	NA	Standard		
Lt.Gov.	\$5,000	\$3,000	\$5,000	NA	Standard		
Sec of Cab	\$5,000	\$3,000	\$5,000	NA	Standard		
GOPM	\$10,000	\$4,000	\$10,000.	NA	Standard		
NREPC	Standard				\$20,000	\$7,500	\$20,000
Mines/ Minerals	\$5,000	\$3,000	\$5,000	NA	Standard		
Econ. Dev.	\$5,000	\$3,000	\$5,000	NA	Standard		

SOURCE: Finance and Administration, Division of Purchases.

APPENDIX C

PERSONAL SERVICE CONTRACT (AMOUNT ENCUMBERED)

APPENDIX C
PERSONAL SERVICE CONTRACT
(AMOUNTS ENCUMBERED)*

AGENCY	1992		1993		1994		1995		1996		1997	
	#	\$ VALUE	#	\$ VALUE	#	\$ VALUE	#	\$ VALUE	#	\$ VALUE	#	\$ VALUE
Finance Reporting Agencies	683	\$47,816,939	695	\$39,224,857	745	\$65,938,269	801	\$63,466,652	917	\$90,695,768	946	\$112,506,582
Emp. Mutual Insurance		NA									11	\$1,754,005
KY Housing Corp.							20	\$983,660	7	\$355,000	15	\$785,650
KY Judic. & Legis. Ret. System									5	\$131,400	5	\$129,700
KY Lottery Corp.							108	\$3,336,467	199	\$8,395,542	133	\$11,106,227
Teachers Retirement System							10	\$3,050,930	1	\$3,447,000	10	\$3,782,200
KSU									29	\$329,645	33	\$460,684
Morehead									169	\$473,536	57	\$507,769
Murray					51	\$536,007	55	\$493,795	33	\$321,528	27	\$428,250
NKU							44	\$622,322	47	\$599,531	39	\$566,589
UK	45	\$6,802,974	43	\$4,452,827	33	\$3,837,291	40	\$4,250,517	38	\$4,093,653	50	\$4,787,606
U of L							43		44	\$6,192,697	59	\$5,499,536
WKU					124	\$506,186	95	\$916,038	80	\$1,476,969	71	\$1,698,988
EKU							43	\$1,048,434	27	\$777,495	51	\$1,077,971
Transportation							393	\$249,524,299	452	\$276,951,746	474	\$269,811,946
LRC							17	\$405,505				
TOTALS	728	\$54,619,913	738	\$63,677,684	953	\$70,817,753	1,669	\$328,098,619	2,048	\$394,241,510	1981	\$414,903,703

SOURCE: *For fiscal years 1992-1996, data was provided by the Personal Service Contract Review Subcommittee. For FY 1997, data was compiled by Program Review Subcommittee, Bureau of Service Contract Review Subcommittee, and the report.

APPENDIX D

MEMORANDUMS OF AGREEMENT WITHIN STATE GOVERNMENT

FYs 1992-1998

**MEMORANDUMS OF AGREEMENT WITHIN STATE GOVERNMENT
FYs 1991/1992**

AGENCIES	Number of MOAs	Number of MOA Amendments	Amount of Original MOAs	Amount of MOA Increases	Total MOA Amounts Plus Increases
Administrative Office of the Courts	3		\$739,000	0	\$739,000
Adult Tech Education	12		\$201,000	0	\$201,000
Agriculture	13		\$74,000	0	\$74,000
Attorney General	11		\$106,000	0	\$106,000
Commission on Children with Special Health Care Needs	34		\$3,083,000	\$96,000	\$3,179,000
Commission on Women	1		\$9,000	0	\$9,000
Corrections	2		\$130,000	0	\$130,000
Council Higher Education	12		\$959,000	0	\$959,000
Dept. Local Gov.	98		\$6,078,000	\$775,000	\$6,853,000
Economic Development	7		\$240,000	0	\$240,000
Education	81	24	\$2,731,000	\$57,000	\$2,788,000
Fair Board	2		\$60,000	0	\$60,000
Finance	4		\$77,000	0	\$77,000
Financial Institutions	1		\$8,000	0	\$8,000
Fish & Wildlife	3		\$172,000	0	\$172,000.00
Gov. Office Coal & Energy	1		\$31,000	0	\$31,000
Human Resources	442	378	\$171,749,000	\$39,285,000	\$211,034,820.00000
Justice Cabinet	12		\$517,000	\$154,000	\$671,000.00
KET	5		\$301,000	0	\$301,000
KY Higher Ed. Assist. Authority	12		\$959,000	0	\$959,000
Labor Cabinet	15		\$369,000	0	\$369,000
Local Gov./Block Grant ¹	78		\$24,722,000	0	\$24,722,000
Medical License	1		\$19,000	0	\$19,000
Military Affairs	8		\$43,000	0	\$43,000
Natural resources	118		\$4,321,000	\$599,000	\$4,920,000.00
Parks	1		\$16,000	0	\$16,000
Vocation Rehabilitation	4		\$296,000	0	\$296,000
Workforce Development	1		\$33,000	0	\$33,000
TOTAL	982	402	\$218,043,000.00	\$40,966,000.00	\$259,009,820.00000

¹The total amount of block grant funds was provided by the Department of Local Government. The total amount of block grant identified in the Finance Cabinet MOA log book did not agree with the actual amount of block grant for 1990. Amendments to block grants are not submitted to the Finance Cabinet and are not recorded in this table.

**MEMORANDUMS OF AGREEMENT WITHIN STATE GOVERNMENT
FYs 1992/1993**

Agencies	Number of MOAs	Number of MOA Amendments	Amount Of Original MOAs	Amount of MOA Increases	Total MOA Amounts Plus Increases
Administrative Office of the Courts	10	0	\$849,000	0	\$849,000
Agriculture	22	0	\$1,368,000	0	\$1,368,000
Attorney General	11	0	\$72,000		\$72,000
Corrections	9	2	\$509,000	\$44,000	\$553,000
Council Higher Education	8	0	\$368,000	0	\$368,000
Dept. Local Gov.	66	1	\$6,110,000	\$300,000	\$6,410,000
Dept. Local Gov. Block Grants	60		\$33,841,000		\$33,841,000
Dept. of Housing, Building & Construction	1		\$6,000		\$6,000
Economic Development	7	0	\$238,000	0	\$238,000
Education	181	45	\$12,566,000	\$1,915,000	\$14,481,000
Finance	1	0	\$65,000	0	\$65,000
Fish & Wildlife	5	0	\$39,000		\$39,000
Governors Office for Creative Services	1		\$10,000		\$10,000
Handicapped Children	41	39	\$4,048,000	\$16,000	\$4,064,000
Human Resources	532	363	\$204,989,000	\$53,489,000	\$258,478,000
Human Rights Commission	6	1	\$95,000		\$95,000
Justice Cabinet	11	1	\$960,000	\$25,000	\$985,000
KET	5	0	\$306,000		\$306,000
KY Center for the Arts	1		\$88,000		\$88,000
KY Geological Survey	1		\$14,000		\$14,000
KY Higher Ed. Assist. Authority	10	0	\$812,000		\$812,000
Labor Cabinet	14		\$291,000		\$291,000
Medical License	1		\$19,000		\$19,000
Military Affairs	8	0	\$110,000		\$110,000
Natural Resources	133	68	\$6,473,000	\$1,367,000	\$7,840,000
Parks	4	1	\$112,000	\$17,000	\$129,000
State Auditor	18		\$395,000		\$395,000
Tourism	11	2	\$279,000	0	\$279,000
Transportation	10		\$78,000		\$78,000
Vocational Rehab	6		\$478,000		\$478,000
Workforce Development	5	1	\$175,000		\$175,000
TOTAL	1,199	524	\$275,763,000	\$57,173,000	\$332,936,000

SOURCE: Compiled by Program Review staff from data received from Finance and Administration Cabinet.

**MEMORANDUMS OF AGREEMENT WITHIN STATE GOVERNMENT
FYs 1993/1994**

Agencies	Number Of MOAs	Number Of MOA Amendme nts	Amount Original MOAs	Of Amount Of MOA Increases	Total MOA Amounts Plus Increases
Administrative Office of the Courts	8	0	\$884,000	0	\$884,000
Agriculture	41	3	\$424,000	\$23,000	\$447,000
Attorney General	14	0	\$110,000	0	\$110,000
Corrections	4	2	\$221,000	\$93,000	\$314,000
Dept. Local Gov.	79	26	\$4,653,000	\$370,000	\$5,023,000
Dept. Local Gov. Block Grants	81	0	\$30,015,000	0	\$30,015,000
Economic Development	5	0	\$203,000	0	\$203,000
Education	203	87	\$8,853,000	\$266,000	\$9,119,000
Finance	6	2	\$66,000	\$7,000	\$73,000
Financial Institutions	1	0	0	0	0
Fish & Wildlife	9	6	\$204,000	0	204,000
Handicapped Children	41	23	0	\$19,000	\$19,000
Heritage Council	1	0	\$32,000	0	\$32,000
Historic Society	1	0	\$65,000	0	\$65,000
Human Resources	539	467	\$231,664,000	\$54,101,000	\$285,765,000
Justice Cabinet	11	7	\$895,000	\$174,000	\$1,069,000
KET	4	0	\$267,000	0	\$267,000
KY Arts Council	1	0	\$5,000	0	\$5,000
KY Center for the Arts	1	0	\$72,000	0	\$72,000
KY Higher Ed. Assist. Authority	13	3	\$1,127,000	\$19,000	\$1,146,000
Labor Cabinet	9	0	\$248,000	0	\$248,000
Medical License	1	0	\$19,000	0	\$19,000
Military Affairs	9	0	\$264,000	0	\$264,000
Natural Resources	143	51	\$14,520,000	\$993,000	\$15,513,000
Parks	0	3	0	\$17,000	\$17,000
Revenue	1	0	\$4,000	0	\$4,000
State Auditor	22	0	\$291,000	0	\$291,000
Tourism	8	0	\$202,000	0	\$202,000
Transportation	5	3	\$252,000	0	\$252,000
Workforce Development	21	0	\$1,089,000	0	\$1,089,000
TOTAL	1,282	683	\$296,649,000	\$56,082,000	\$352,731,000

SOURCE: Compiled by Program Review staff from data received from Finance and Administration Cabinet.

MEMORANDUMS OF AGREEMENT WITHIN STATE GOVERNMENT
FYs 1994/1995

Agencies	Number of MOAs	Number of MOA Amendments	Amount of original MOAs	Amount of MOA Increases	Total MOA Amounts Plus Increases
Administrative Office of the Courts	21	2	\$1,132,000	\$7,000	\$1,139,000
Agriculture	44	2	\$925,000	\$7,000	\$932,000
Attorney General	36	0	\$477,000	0	\$477,000
Corrections	9	6	\$122,000	\$131,000	\$253,000
Council Higher Education	9	0	\$192,000	0	\$192,000
Dept. Local Gov.	83	7	\$6,927,000	\$520,000	\$7,447,000
Dept. Personnel	1	0	\$15,000	0	\$15,000
Economic Development	7	0	\$176,000	0	\$176,000
Education	174	108	\$12,129,000	\$1,437,000	\$13,566,000
Fair Board	3	0	\$28,000	0	\$28,000
Finance	6	0	\$104,000	0	\$104,000
Financial Institutions	1	0	\$8,000	0	\$8,000
Fish & Wildlife	17	1	\$325,000	0	\$325,000
Handicapped Children	50	17	\$4,726,000	\$60,000	\$4,786,000
Heritage Council	1	0	\$28,000	0	\$28,000
Housing Building & construction	1	0	\$15,000	0	\$15,000
Housing Corp	1	0	\$15,000	0	\$15,000
Human Resources	530	334	\$291,300,000	\$29,732,000	\$321,032,000
Human Rights Commission	6	1	\$101,000	0	\$101,000
Justice Cabinet	7	0	\$980,000	0	\$980,000
KET	4	0	\$275,000	0	\$275,000
KY Higher Ed. Assist. Authority	11	3	\$222,000	\$33,000	\$255,000
Labor Cabinet	16	0	\$368,000	0	\$368,000
Local Gov./Block Grants	70	1	\$38,723,000	\$11,000	\$38,734,000
Medical License	1	0	\$19,000	0	\$19,000
Military Affairs	10	2	\$410,000	0	\$410,000
Natural Resources	210	47	\$11,311,000	\$1,007,000	\$12,318,000
Parks	3	0	\$63,000	0	\$63,000
PSC	1	0	\$3,000	0	\$3,000
Public Advocacy	1	0	\$12,000	0	\$12,000
Revenue	1	0	\$24,000	0	\$24,000
State Auditor	5	0	\$45,000	0	\$45,000
State Police	5	4	\$98,000	\$172,000	\$270,000
Tourism	15	0	\$331,000	0	\$331,000
Transportation	10	0	\$89,000	0	\$89,000
Workforce Development	31	2	\$2,823,000	0	\$2,823,000
TOTAL	1,401	537	\$374,541,000	\$33,117,000	\$407,658,000

SOURCE: Compiled by Program Review staff from data received from Finance and Administration Cabinet.

**MEMORANDUMS OF AGREEMENT AND MEMORANDUMS OF UNDERSTANDING WITHIN
STATE GOVERNMENT BY AGENCY*
FYs 1995/1996**

Agency	Amount of MOA	Amount of Amendment	Total	Number of Contracts	Number of Amendments
Agriculture	\$387,325.00		\$387,325	32	0
Administrative Office of the Courts	\$1,218,992	\$16,530	\$1,235,522	18	2
Arts Council	\$1,872		\$1,872	2	0
Attorney General	\$1,053,421		\$1,053,421	45	0
Auditor's office	\$19,365		\$19,365	2	0
Dept. for the Blind	\$10,910		\$10,910	2	0
Capitol Plaza	\$35,000		\$35,000	1	0
Commission for Children	\$5,018,061	\$116,482	\$5,134,543	35	16
Corrections	\$1,017,049	\$53,820	\$1,070,869	15	1
Council on Higher Education	\$26,288		\$26,288	3	0
Crime Victims Comp. Board	\$2,680		\$2,680	1	0
Economic Development	\$260,360		\$260,360	4	0
Education	\$19,048,673	\$1,575,692	\$20,624,365	198	111
Fair Board	\$9,000		\$9,000	1	0
Finance	\$120,000		\$120,000	7	0
Financial Institutions	\$8,000		\$8,000	1	0
Fish & Wildlife	\$222,581		\$222,581	18	3
Heritage Council	\$100,000		\$100,000	5	0
Housing, Building, & Construction	\$2,536		\$2,536	2	0
Human Resources	\$244,225,818	\$52,670,972	\$296,896,790	533	342
Human Rights Commission	\$7,500		\$7,500	1	5
Justice Cabinet	\$909,668	\$199,138	\$1,108,806	14	7
Kentucky Horse Park	\$8,300		\$8,300	1	0
Information Resources Commission	\$251,926	\$37,500	\$289,426	10	1
KET	\$269,082		\$269,082	4	0
KHEAA	\$1,090,000		\$1,090,000	13	4
Labor	\$382,072		\$382,072	17	0
Library & Archives	\$10,910		\$10,910	2	0
Local Government	\$7,440,374	\$758,769	\$8,199,143	89	12
Local Government Block Grants	\$31,806,012		\$31,806,012	46	0
Board of Medical Licensure	\$18,900		\$18,900	1	0
Military Affairs	\$363,613		\$363,613	9	1
Mines & Minerals	\$85,822		\$85,822	2	0
Natural Resources	\$4,809,463	\$1,469,287	\$6,278,750	109	91
Board of Nursing	\$3,216		\$3,216	1	0
Parks	\$224,504		\$224,504	12	1
Personnel Cabinet	\$14,800		\$14,800	1	0
Public Advocacy	\$2,680		\$2,680	1	0
Public Protection & Regulation	\$3,500		\$3,500	1	0
Revenue Cabinet	\$2,500		\$2,500	1	0
Tourism Cabinet	\$219,876		\$219,876	15	0
Transportation Cabinet	\$119,928		\$119,928	12	0
Treasury	\$15,000		\$15,000	1	0
Workforce Development	\$11,372,398	\$36,322	\$11,408,720	49	7
Totals	\$332,219,975	\$56,934,513	\$389,154,487	1337	604

SOURCE: Report required by 200 KAR 5:025 Section 2 and other data compiled by Program Review and Investigations staff from information provided by the Finance and Administration Cabinet. *Amendment information from the Finance and Administration Cabinet for Families and Children and Health Services were not separated for 1997. They were included together under CHR. All amendments for Health Services & Families and Children are under Health Services for the purpose of this table .

**MEMORANDUMS OF AGREEMENT AND MEMORANDUMS OF UNDERSTANDING
WITHIN STATE GOVERNMENT BY AGENCY
FYs 1996/1997**

Agency Name	Number of MOA's	Number of Amendments	Amount of MOA	Amount of Amendment	Total Amount of MOA Plus Increases
Administrative Office of the Courts	15	1	\$ 1,401,631	\$720	\$1,402,351
Agriculture	63	7	\$ 1,719,697	\$311,528	\$2,031,225
Arts Council	2	0	\$ 2,144	\$0	\$2,144
Attorney General	53	16	\$ 1,558,243	\$15,397	\$1,573,640
Capital Plaza Authority	1	0	\$ 35,000	\$0	\$35,000
Children's Commission	38	27	\$ 4,024,633	\$43,617	\$4,068,250
Coal Marketing Council	9	1	\$ 1,304,600	\$0	\$1,304,600
Corrections	13	2	\$ 1,247,559	\$100,000	\$1,347,559
Deaf & Hard of Hearing	2	1	\$ 15,400	\$0	\$15,400
Economic Development	2	0	\$ 250,000	\$0	\$250,000
Education	192	121	\$ 19,445,724	(\$311,888)	\$19,133,837
Environmental Education Council	1	0	\$ 19,920	\$0	\$19,920
Ethics Commission	1	0		\$0	\$0
Fair Board	2	0	\$ 22,580	\$0	\$22,580
Families & Children	447	221	\$ 150,079,496	\$38,792,777	\$188,872,273
Finance	6	1	\$ 84,340	\$0	\$84,340
Financial Institutions	1	0	\$ 8,000	\$0	\$8,000
Financial Mgmt.	2	0	\$ 24,010	\$0	\$24,010
Fish & Wildlife	20	7	\$ 1,542,104	\$0	\$1,542,104
Health Services	98	0	\$ 151,801,534	\$0	\$151,801,534
Heritage Council	3	1	\$ 92,072	\$7,500	\$99,572
Horse Park	1	0	\$ 41,000	\$0	\$41,000
Human Rights Commission	1	0	\$ 4,020	\$0	\$4,020
Insurance	1	0	\$ 65,000	\$0	\$65,000
Justice Cabinet	12	0	\$ 1,773,396	\$0	\$1,773,396
KET	3	3	\$ 195,845	\$0	\$195,845
KHEAA	14	4	\$ 920,201	(\$12,100)	\$908,101
KIRM	2	0	\$ 67,360	\$0	\$67,360
Labor Cabinet	14	0	\$ 353,213	\$0	\$353,213
Libraries & Archives	1	0	\$ 1,072	\$0	\$1,072
Local Government	124	19	\$ 41,401,160	\$630,900	\$42,032,060
Med. Licensure	1	0	\$ 18,900	\$0	\$18,900
Military Affairs	11	3	\$ 565,517	\$0	\$565,517
Mines & Minerals	1	0	\$ 85,715	\$0	\$85,715
Natural Resources	113	81	\$ 10,656,852	\$792,696	\$11,449,548
Occupational Safety & Health	1	0	\$ 15,000	\$0	\$15,000
Office of Policy & Management	1	0	\$ 7,020	\$0	\$7,020
Parks	2	1	\$ 465,202	\$0	\$465,202
Personnel Cabinet	1	0	\$ 19,092	\$0	\$19,092
Postsecondary Education	11	0	\$ 683,200	\$0	\$683,200
Public Service Commission	1	0	\$ 7,000	\$0	\$7,000
Revenue Cabinet	1	0	\$ 35,000	\$0	\$35,000
State Police	9	4	\$ 75,015	\$39,500	\$114,515
Tourism	2	0	\$ 105,000	\$0	\$105,000
Transportation	13	0	\$ 2,848,844	\$0	\$2,848,844
Workforce Development	49	4	\$ 11,824,080	(\$68,965)	\$11,755,116
Totals	1,361	525	\$ 406,912,392	\$40,341,682	\$447,254,074

SOURCE: Finance and Administration Cabinet, Division of Purchasing.

**MEMORANDUMS OF AGREEMENT AND MEMORANDUMS OF UNDERSTANDING
WITHIN STATE GOVERNMENT BY AGENCY
FYs 1997/1998**

Agency Name	Number of MOA's	Number of Amendments	Amount of MOA	Amount of Amendment	Total Amount of MOA Plus Increases
Agriculture	37	10	\$ 2,030,767.00	\$ 116,665	\$ 2,147,432
Attorney General	30		\$ 555,170.00		\$ 555,170
Children's Commission	36	7	\$ 5,503,546.01	\$ 53,869	\$ 5,557,415
Coal Marketing & Export Council	7	1	\$ 389,916.00		\$ 389,916
Corrections	13	2	\$ 590,143.00	\$ 97,984	\$ 688,127
Council on Higher Ed.		2	\$ 48,200.00		\$ 48,200
Developmental Disabilities	3	1	\$ 471,970.00	\$ 7,000	\$ 478,970
Education	185	90	\$ 19,080,214.05	\$ 806	\$ 19,081,020
Ethics Commission	0	1	\$ -	\$ -	
Families & Children	404	147	\$ 147,781,353.97	\$ 18,620,169	\$ 166,401,523
Finance	4	2	\$ 183,279.12	\$ 3,400	\$ 186,679
Financial Institutions	1		\$ 8,000.00		\$ 8,000
Financial Management	1		\$ 43,845.00		\$ 43,845
Fish & Wildlife	19	3	\$ 394,240.00		\$ 394,240
Governor's Office	1		\$ 272,310.00		\$ 272,310
Health Purchasing Alliance	2		\$ 36,592.00		\$ 36,592
Health Services	88	49	\$ 130,797,820.36	\$ 3,979,206	\$ 134,777,026
Heritage Council	4		\$ 89,700.00		\$ 89,700
Insurance	1		\$ 20,000.00		\$ 20,000
Justice	2	2	\$ 828,772.00	\$ 94,430	\$ 923,202
Juvenile Justice	39		\$ 6,222,400.00		\$ 6,222,400
Kentucky Kare	1		\$ -		\$ -
KET	2		\$ 161,384.00		\$ 161,384
KIRM	7		\$ 245,000.00		\$ 245,000
KOSH	1		\$ 60,000.00		\$ 60,000
Labor Cabinet	13		\$ 338,500.00		\$ 338,500
Local Government	82	30	\$ 17,631,744.00	\$ 708,878.00	\$ 18,340,622
Lottery Corporation	1		\$ 99,890.00		\$ 99,890
Lottery Corporation	1		\$ 1.00		\$ 1
Medical Licensure	1		\$ 18,900.00		\$ 18,900
Military Affairs	12	1	\$ 746,465.00		\$ 746,465
Mines & Minerals	1		\$ 92,795.00		\$ 92,795
Natural Resources	87	37	\$ 7,662,437.56	\$ 445,500	\$ 8,107,938
Office of Policy & Management	5		\$ 296,873.00		\$ 296,873
Parks	5	1	\$ 37,581.00		\$ 37,581
Racing Commission	2		\$ 14,800.00		\$ 14,800
Revenue			\$ -		\$ -
State Police	3	2	\$ 42,428.00	\$ 20,000	\$ 62,428
Technical Education	1		\$ 19,000.00		\$ 19,000
Tourism	13	1	\$ 247,500.00		\$ 247,500
Transportation	9		\$ 1,526,359.00		\$ 1,526,359
Workforce Development	28	12	\$ 16,744,642.17	\$ 76,646	\$ 16,821,288
Grand Total	1,152	401	\$ 361,334,538.24	\$ 24,224,553	\$ 385,559,091

SOURCE: Report required by 200 KAR 5:025 Section 2 and other data compiled by Program Review and Investigations Staff from information provided by the Finance and Administration Cabinet .

APPENDIX E

A COMPARISON OF FEATURES IN CONTRACT ADMINISTRATION

A Comparison of Features in Contract Administration

Features	NASPO	Texas	Federal
Planning	<p>In-depth analysis of the agency's needs</p> <p>Drafting a statement of work that should specify milestones tied to payment unless payment is at end of contract and monitoring points and benchmarks against which the contractors performance can be evaluated</p>	N/A	Development of a clear, concise performance based statement of work
Contractor Selection	Consistent fairness, openness, and impartiality are essential in generating and maintaining competition in procurement	<p>Ensures that the best contractors are fairly and objectively selected through:</p> <p>Assessment of the strengths and weakness of the contractor</p> <p>Adequate competition</p> <p>Past performance tracking</p>	N/A
Contract Provisions	<p>The contract should include a wide range of penalties</p> <p>The project manager reviews the terms of the contract and the process of modifying and changing the contract</p> <p>The project manager conducts a start up conference that includes payment procedures, contract management procedures and security issues</p>	<p>Contract provisions and agency regulations hold contractors accountable by:</p> <p>Clear statement of services expected</p> <p>Defined performance standards</p> <p>Contractual restrictions on the use of public funds</p> <p>Effective sanctions</p> <p>Evaluation of contractors</p>	<p>The contract officer representative (COTR) is appointed.</p> <p>The COTR reviews the contract and prepares a contract administration plan that cost effectively measures the contractor's performance</p> <p>A pre-meeting with applicable program and contracting officials prior to the post award orientation conference helps create a clear understanding of specific responsibilities and restrictions administering the contract</p>

Contractor Oversight	<p>Project manager maintains communications between the agency and the contractor</p> <p>Project manager serves as the conduit for communications between the agency and the contractor</p> <p>The project manager arbitrates what the contractor can be asked to do and serves as an informal administrative judge if a dispute occurs. There should be a dispute resolution system</p> <p>The project manager is responsible for effective use of sanctions and enforcement tools</p>	<p>Oversight sufficient to ensure quality services by:</p> <ul style="list-style-type: none"> Emphasis on outcomes Cost-effectiveness of contractor expenditures Follow-up reviews, audits and investigations Corrective actions are taken Formalized risk assessment to select contractors for review or identify level of review necessary <p>Oversight of subcontractors</p>	<p>Typical contract monitoring duties include:</p> <ul style="list-style-type: none"> Review of contractor report requirements Conduct customer satisfaction surveys Inspect and accept deliverables Resolve problem resolution Use corrective action plan Modify contracts where necessary Respond to recipient and customer complaints Maintain incident, deficiency log Periodic audits Assure compliance with state, federal, and special regulations Monitor use of subcontractors / suppliers Review of contractor purchasing system
Evaluation	<p>Agency must file an evaluation of the contractor's performance within a certain time after the completion of the contract</p> <p>Adoption of rules to assure future contracts are not awarded to contractors receiving unsatisfactory evaluations or with records of poor past performance</p>	<p>Standardized criteria to evaluate contractor performance</p>	<p>Post-contract audit</p> <p>Post-contract contractor evaluation</p>

Training	Central procurement office should conduct training for agencies in contract administration including a start-up conference of all interested parties prior to the beginning of performance	N/A	Establishment of a COTR training and certification program is a well balanced approach that prepares the COTR to perform the job and strengthens contract administration One certification program correlates the amount of training to the dollar value and complexity of the contract
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Source: Compiled by Program Review staff from information supplied by National Association of State Purchasing Officials, the *Practices for Contract Administration*, Office of Federal Procurement Policy and Texas Office of the State Auditor.

APPENDIX F

RECOMMENDATION WORKSHEET

**PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
STATE AGENCY SERVICE CONTRACT ADMINISTRATION
RECOMMENDATION WORKSHEET
MAY 1998**

**RECOMMENDATION #1: FINANCE SHOULD MONITOR THE CONTRACT ADMINISTRATION
AGENCIES**

The Finance and Administration Cabinet has statutory responsibility to issue regulations and compliance. The Cabinet should review agency plans for contract administration and physically periodic basis concentrating especially on complex contracts, high cost contracts, contracts to be reviewed significant impact on health or safety.

AGENCY RESPONSE:	STAFF RESPONSE/COMMITTEE
Agree	Adopted 6/18/98

RECOMMENDATION #2: FINANCE TRAINING AND GUIDANCE

In delegating authority to the agencies for all aspects of contract administration, the Finance Cabinet is ensuring agencies are capable of performing their duties. The Finance Cabinet should develop a training program with personnel assigned responsibility for contract monitoring. Such a program could be developed through the Services Center. Finance should also organize periodic workshops utilizing staff from state administration expertise or utilize other resources such as the training provided by the National Institute of Purchasing.

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS
Agree Finance is establishing a training curriculum on contract administration Finance is hopes to create an “agency resource center” with information on contract administration, bidding and vendor relations.	Adopted 6/18/98

RECOMMENDATION #3: ENFORCEMENT, PERFORMANCE, ASSESSMENT AND DOCUMENTATION POLICIES

The Finance and Administration Cabinet should require agencies to include in all service contracts provisions for enforcement, performance assessment, monitoring and documentation. Finance should develop model contracts for the various major categories of contracts to assist the agencies and provide training to assist agency leadership in implementing these provisions.

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS
Agree	Adopted 6/18/98

RECOMMENDATION #4: DEFINE CONTRACT ADMINISTRATOR ROLES AND RESPONSIBILITIES

The Finance and Administration Cabinet should define the roles, responsibilities and necessary experience for individuals serving as full-time or part-time contract administrators. This should be in line with the professional standards that require agencies to follow in administering contracts.

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS:
Agree	Adopted 6/18/98

RECOMMENDATION 5: FINANCE SHOULD IDENTIFY THE PRINCIPLES IT REQUIRES AGENCIES TO FOLLOW IN PURCHASING

Finance Cabinet regulations require that agencies administer contracts in accordance with sound purchasing principles. This report outlines the major principles recommended by federal, state, and private organizations. Finance Cabinet should modify its regulations to identify what these “sound principles” are and provide policies for using them.

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS:
Agree	Adopted 6/18/98

RECOMMENDATION 6: CONTRACTOR PERFORMANCE INFORMATION FILE

The Finance Cabinet should require agencies to submit a record of complaints and problems encountered and agency satisfaction with the resolution. In addition, Finance should develop a post-contract agency to rate the contractor's performance, strengths, and weaknesses. This documentation should be maintained by contractor and available to the agencies.

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS:
<p>Agree</p> <p>Finance has discussed with other agencies the establishment of a contractor performance information file. The current system is paper and pencil and too cumbersome. The new electronic management administration reporting system (MARS) will have a subsection for maintaining contractor performance information and will be accessible to agencies for reporting and reviewing.</p>	<p>Adopted 6/18/98</p>

RECOMMENDATION 7: POST-CONTRACT REVIEWS

Finance should require agencies to perform post-contract reviews for services of a recurring nature to evaluate the effectiveness of the service, costs, and potential cost savings related to the contract for the purpose of identifying weaknesses and improvements for future contracts. Agencies should be required to document these reviews with the contract files, and submit copies to the Finance Cabinet for maintenance in Finance contract files.

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS:
Agree	Adopted 6/18/98